S. Hrg. 100-1060

IMPLEMENTATION OF IMMIGRATION REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE AFFAIRS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE IMPLEMENTATION OF THE IMMIGRATION REFORM AND CONTROL ACT

APRIL 14, 1988

Serial No. J-100-60

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
96-155 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S521-47

COMMITTEE ON THE JUDICIARY

JOSEPH R. BIDEN, Jr., Delaware, *Chairman*

EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois

STROM THURMOND, South Carolina
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
CHARLES E. GRASSLEY, Iowa
ARLEN SPECTER, Pennsylvania
GORDON J. HUMPHREY, New Hampshire

Mark H. Gitenstein, *Chief Counsel*
Diana Huffman, *Staff Director*
Dennis W. Shedd, *Minority Chief Counsel*

Subcommittee on Immigration and Refugee Affairs

EDWARD M. KENNEDY, Massachusetts, *Chairman*

PAUL SIMON, Illinois

ALAN K. SIMPSON, Wyoming

Jerry M. Tinker, *Staff Director*
Carolyn P. Osolinik, *Chief Counsel*
Richard W. Day, *Minority Counsel*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

Page
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts 1
Simpson, Hon. Alan K., a U.S. Senator from the State of Wyoming 2
Simon, Hon. Paul, a U.S. Senator from the State of Illinois 5

CHRONOLOGICAL LIST OF WITNESSES

Exon, Hon. J. James, a U.S. Senator from the State of Nebraska 13
Nelson, Hon. Alan C., Commissioner, Immigration and Naturalization Service 17
Panel consisting of Hon. Lawton Chiles, a U.S. Senator from the State of Florida; Dave Smith, police lieutenant, Orlando, FL; and Wade J. Henderson, associate director, Washington Office, American Civil Liberties Union 19
Panel consisting of Doris Meissner, Carnegie Endowment for International Peace; David S. North, Transcentury Development Associates; and Arnold P. Jones, Senior Associate Director, General Government Division, U.S. General Accounting Office 114

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Chiles, Hon. Lawton:
  Testimony 19
  Prepared statement 26
Exon, Hon. J. James: Testimony 13
Henderson, Wade J.:
  Testimony 32
  Prepared statement on behalf of the American Civil Liberties Union 34
  Letter to Hon. George Bush from John R. Bolton, Assistant Attorney General, October 9, 1987 51
Jones, Arnold P.:
  Testimony 155
  Prepared statement 156
  Responses to questions submitted by:
    Senator Edward M. Kennedy 168
    Senator Alan K. Simpson 168
Kennedy, Hon. Edward M.: Prepared statement of the Chicago Committee on Immigrant Protection 6
Meissner, Doris:
  Testimony 114
  Prepared statement 118
Nelson, Hon. Alan C.:
  Testimony 17
  Prepared statement 65
  Supplemental statement 112
  Responses to questions submitted by Senator Simon 176
North, David S.:
  Testimony 131
  Prepared statement 135
  Excerpts, from an interim report on the Alien Legalization Program, coauthored by Anna Mary Portz 137
  Responses to questions submitted by Senator Edward M. Kennedy 142
  Responses to questions submitted by Senator Alan K. Simpson 145
Smith, Dave:
  Testimony 21
  Chart of legal or illegal alien 23

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Page

Letter of Diego C. Asencio, chairman, Commission for the Study of International Migration and Cooperative Economic Development, to Senator Edward M. Kennedy, May 13, 1988 181

Prepared statement of Edward I. Koch, mayor, city of New York 186

Table, Legalization Regulatory and Policy Changes: A Summary, by the National Council of La Raza 199

Charts of a survey conducted under contract with INS 201

Proclamations of the States of:

- California 209
- Nevada 210
- Arizona 211
- Colorado 212
- Idaho 213
- Michigan 214
- Washington 215

Submissions of Rick Swartz, National Immigration & Citizenship Forum:

- Letter to Senator Edward M. Kennedy, April 13, 1988 216
- Prepared summary 217
- Prepared statement 221

Prepared statement of Daniel Stein, The Federation for American Immigration Reform 249

Letter from the United States Catholic Conference, Washington, DC, March 2, 1988 258

IMPLEMENTATION OF IMMIGRATION REFORM

THURSDAY, APRIL 14, 1988

U.S. Senate,
Subcommittee on Immigration and Refugee Affairs,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (chairman of the subcommittee) presiding.

Also present: Senator Simpson.

Staff present: Jerry Tinker, staff director; Michael Myers, counsel; Richard Day, minority staff director; Carl Hampe, minority counsel.

OPENING STATEMENT OF SENATOR KENNEDY

Senator Kennedy. We will come to order.

Today's hearing resumes the subcommittee's continuing oversight of the implementation of the Immigration Reform and Control Act. We will also consider once again the program and budget requests of the Immigration and Naturalization Service for the coming fiscal year.

One year ago, the subcommittee reviewed with officials of the Immigration Service their plans for implementing the major immigration reform signed into law by President Reagan in 1986. The new law took us into uncharted waters and many uncertainties loomed ahead.

Much has happened since then, and most of it to the good. Thanks to the hard work of the immigration officers and voluntary and church agencies, over 1.5 million people have come forward to apply for amnesty, and the number is growing each day.

We have also seen the implementation of employer sanctions in a constructive fashion, assuring greater voluntary compliance and better cooperation between employers and the Immigration Service.

But much remains to be done. Despite the effective work done so far, we need more time to assure that those who are eligible for the legalization program have a reasonable opportunity to apply.

Immigration experts tell us that there are still large groups of eligible illegal aliens who may not make it through the door by the May 4th deadline. Today is income tax day and thousands of Americans will be granted extensions to file their tax returns.

Fair is fair. If extensions like that are routinely granted, there seems no reason not to grant an extension for applications under the legalization program. People can get extensions from the IRS. Why not from the INS?

We also need to review other aspects of the immigration reforms. Is the public education effort sufficient for the amnesty and for the employer sanctions program? What is happening to families when not all family members qualify for amnesty?

We also face other immigration issues. Decisions from the INS are threatening to make the nurse shortage worse by forcing thousands of foreign nurses with temporary work visas to leave the United States.

As a matter of health policy, we need to address the long-term problem of recruiting and training American nurses. But in the meantime, it is not only reasonable but essential to look to other sources of trained nurses, including temporary immigration, and I would hope we would work out a realistic resolution of this problem without the need for legislation.

The reform bill that Senator Simpson and I introduced which passed the Senate last month will open new opportunities for the nurses and others whose skills are in short supply to come to the United States, but, again, that is a long-term answer, not an answer to the immediate problem.

As this hearing makes clear, immigration issues are a pressing concern in many fields, and I look forward to working with others in Congress to develop practical responses that not only meet the Nation's current needs but that are also true to America's immigrant heritage.

I recognize the Senator from Wyoming.

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Mr. Chairman, I thank you very much and I commend you for holding this hearing on the progress of the Immigration Reform and Control Act and the INS budget.

It is always a great pleasure to work with you; I enjoy that very much. That is a pleasure indeed either on legal immigration or some of the deep problems with regard to what we tried to solve in 1986.

I am very pleased to see that we will consider the alien welfare concern of Senator Exon and welcome him here. I think that that is a very appropriate thing to address, as well as the concerns of Senator Chiles on criminals, true criminals, under the definition of the activity he has presented us in his legislation.

I want to thank my good friend from Nebraska for refraining from offering his legislation as amendments to the legal immigration bill, and I appreciate your willingness, Mr. Chairman, as you promised, to have the hearing in this situation.

I believe that careful oversight of the Immigration Act is essential. We have tried to do that, you and I both. House and Senate Members who were involved in the creation of it have both tried to do that.

I believe that the new law is progressing quite well. Border apprehensions are lower than in the year before the bill's passage. Employer groups seem to be voluntarily complying with the law.

We had a question about how well that would be done. I think they have done a superb job.

The GAO has found no discrimination resulting so far from employer sanctions, and that, of course, is something that you and I, Mr. Chairman, have both built into the law carefully to assure that we did not have that. There are ways to assure that it did not take place and ways to correct it if it did take place.

The amnesty program has received almost as many applicants as the Congressional Budget Office estimated it would. With 3 weeks left to apply, I think that is good to note.

Then, finally, on the question of extending the legalization application period, I have seen no solid evidence which shows that there are large numbers of qualified aliens out there who have not applied.

If I could be furnished with that, I would listen very carefully.

As well, the additional costs that the Immigration Service would likely bear with such an extension are unacceptable and unbudgeted: leases that would have to be renewed, a lot of very down-to-earth, nuts-and-bolts business in an extension.

The CBO estimated that 1.65 million persons would be legalized, and the applications are coming in at exactly that rate. I think the thing that troubles me a bit is that those who suggest an extension are those who never lent a hand in the passage of this bill. They were the ones dragging their feet.

In fact, their testimony discloses, and I am compiling it—they said there cannot be 3 to 12 million aliens in the United States; that just cannot be. There may be a million, there may be 500,000, but in any event only 40 percent will come forward. That was fascinating, and we are going to recompile that and present it because this debate will take place on the floor of the Senate.

Congress intended that mere illegal residence since 1982 not be sufficient to allow someone to qualify for amnesty. We also required proper documentation of the claim and we excluded some who would not qualify under our normal immigration laws.

So I look forward to working with you, Mr. Chairman, and I look forward to receiving the testimony from these very fine witnesses. Finally, I think we should not fail to note that the Immigration Service is requesting $859 million for fiscal year 1989. That is an increase of almost $500 million since the year this subcommittee was formed in 1982, reformed after you chaired it for so many years, and the request then was for $363 million.

I feel that this has been a rather remarkable increase, but it has been money well spent, and I commend the Commissioner. I do not know who could have done it better under the transition from a totally unworkable system to what we hope is going to be a workable system. He is a living repository of congressional intent, whether it has been laid out in letters or through delightful conversations. We have made great strides and I trust those improvements will continue.

I thank you, Mr. Chairman.

Senator **Kennedy**. Thank you very much, Senator Simpson.

We have a statement from Senator Simon and a statement from the Chicago Committee on Immigrant Protection which we will insert in the record at this point.

[The statements follow:]

PAUL SIMON
ILLINOIS

COMMITTEES:
LABOR AND HUMAN RESOURCES
JUDICIARY
FOREIGN RELATIONS
BUDGET

United States Senate
WASHINGTON, DC 20510

STATEMENT OF SENATOR PAUL SIMON

ON IMPLEMENTATION OF IMMIGRATION REFORM

April 14, 1988

I wish to thank the Chairman for calling this hearing on the implementation of the Immigration Reform and Control Act of 1986. This law has had historic impact throughout the nation, not only among the undocumented and their families, but on employers and the nation as a whole.

I am very pleased that over one million individuals have come forward to apply for the benefits of the legalization program. However, I am deeply concerned that there are many more individuals who have not come out from the shadows to gain the new legal status to which they are entitled. For example, in the State of Illinois, the I.N.S. estimated that 200,000 individuals would be eligible for legalization. However, only 78,000 people have come forward. Fewer than three-eighths of those who have submitted applications have received final approval from the I.N.S.

Frankly, we can do better. That is why I have cosponsored the legalization extension bill with our Chairman. This bill will give the I.N.S. more time to provide better education, community and media outreach programs. I believe one year is appropriate. I am very disturbed about the continued confusion regarding the I.N.S. policy on families. In the Chicago district, the Chicago Committee on Immigrant Protection informs me that there are fourteen instances in which a family member goes to the I.N.S. seeking to apply to stay in the United States with his or her family only to be issued an order to leave the country. I am asking that the C.C.I.P.'s testimony be placed in the hearing record in its entirety.

I have some questions for Commissioner Alan Nelson which I am submitting in writing today, for the record. I look forward to his responses. Congress intended for the legalization program to be a one-time-only opportunity. We must make certain that the program is conducted fully and fairly.

230 S. Dearborn
Kluczynski Bldg., 38th Floor
Chicago, IL 60604
312/353-4952

3 West Old Capitol Plaza
Suite 1
Springfield, IL 62701
217/492-4960

8787 State St.
Suite 212
East St. Louis, IL 62203
618/398-7707

250 West Cherry
Room 115-B
Carbondale, IL 62901
618/457-3853

TESTIMONY OF

THE CHICAGO COMMITTEE ON IMMIGRANT PROTECTION

SERVICE PLANNING WORK GROUP:

CATHOLIC CHARITIES OF CHICAGO
Cecilia Muñoz, Chair
EPISCOPAL DIOCESE OF CHICAGO
LUTHERAN CHILD AND FAMILY SERVICES
POLISH WELFARE ASSOCIATION
TRAVELERS & IMMIGRANTS AID
WORLD RELIEF

IN RE: S.2015

U.S. SENATE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS

APRIL 14, 1988

The Service Planning Work Group of the Chicago Committee on Immigrant Protection is comprised of the six major nationally affiliated QDEs in the greater Chicago area. The CCIP is a coalition of over 50 private and public organizations which has dedicated itself since late 1986 to addressing the needs of the immigrant community in the Chicago area. As a coalition, we represent a large portion of Chicago's diverse undocumented immigrant community.

As QDEs, the members of our work group have been on the front lines of implementation of the Immigration Reform and Control Act of 1986. Because of our first-hand experience with undocumented immigrants who have been able to benefit from Legalization, as well as those who have not, we strongly urge a full year extension of the Legalization Program under IRCA. We welcome this opportunity to provide written testimony to the human side of IRCA implementation, and the enormous cost to immigrants and their families if the program is not extended by a year.

IMPLEMENTATION PROBLEMS

In Chicago, and indeed throughout the country, a year has not been sufficient time to implement the Legalization Program adequately. Our efforts at preparation were seriously hindered by the late arrival of the final regulations on May 1 of 1987. In addition, the establishment of four new Legalization Offices in the Chicago area by the Immigration Service has meant that the QDEs confront confusing and inconsistent policies from office to office. As we continue to work with INS to clarify the application procedures, often taking copies of INS wires with us to show the adjudicators, QDEs must tailor what we submit to where we submit it.

For example, the Pulaski Street Legalization Office requires picture identification for all applicants (a hardship for many, and not a requirement of the regulations), while the other offices have no such requirement. In addition some of the QDEs are required to submit all applications for Spanish-surnamed applicants using both their mothers' and fathers' surnames (not common usage), while other QDEs submit applications to the same offices without needing to fulfill this requirement. This has created an undue amount of confusion for the QDEs, and, more important, for the applicants we serve.

REGIONAL PROCESING FACILITY BACKLOGS

Delays at the INS Regional Processing Facilities have also hindered our efforts. To date, only 35% of the applications submitted in this region have received final adjudications from the Lincoln, Nebraska processing facility. This has stood in the way of the most effective method of public information, success stories communicated through word of mouth.

From the QDE perspective, the low adjudication rate makes it difficult for us to process cases for our "borderline" clients. Without the benefit of knowing how final decisions are being made with respect to documentation, issues of excludability and waivers, we are, eleven months into the program, still working essentially in the dark on several issues. Most notably, just two weeks ago the INS apparently reinterpreted its policy on what constitutes an alien who is "likely to become a public charge". With so little time left in the program, we are once again changing our strategy for case preparation and working to clarify exactly how this change will affect our clients at the local INS offices. We feel strongly that the changes in interpretation of this and several other regulations require an extension of the application period to ensure that all eligible applicants have the opportunity to benefit from the program.

PUBLIC INFORMATION

According to a number of local and national reports, the "Phase I" public information effort of the Immigration Service focused almost exclusively on employer sanctions. "Phase II" began in earnest in Chicago in late February, with "Don't Get Left Behind" billboards and radio announcements. Even so, QDEs are still waiting for the informational posters and flyers that we ordered from the INS as part of the Phase II effort.

Through our community forums, informal talks at churches, and other outreach efforts, we have heard vast quantities of misinformation coming out of the immigrant community. Even in April, as immigrants begin to respond in large numbers to the "Phase II" public information initiative, the QDEs are being bombarded with phone calls requesting the most basic information about Legalization. We hear questions ranging from "How can I prove that I'm eligible?" to "Will accepting a bag of food from my parish affect my ability to apply?" There are large numbers of immigrants who are potentially eligible for Legalization who have simply not yet gotten the message about how and where to apply, or who are holding back due to misinformation. With Phase II beginning in earnest only now, we need time to make sure that they hear the message.

FAMILY UNITY

Perhaps the most compelling of our local problems is the lack of a legislated family unity provision within IRCA. Our contact with applicants shows that this has been a significant deterrent to applying. Those who are brave enough to come forward are extremely uncomfortable about providing the names of ineligible family members on their applications, even with our assurances that confidentiality is strictly protected.

Many more have simply not come forward because they fear that their family members may be deported as a result of their application. Another major concern is that, if a family member is legitimately apprehended by the INS, the entire family may be put in the uncomfortable situation of having to choose to stay together or live apart in order to maintain legal status in the United States. Rather than face this situation, many elect not to apply.

In order to address this fear, the Immigration Service instituted what it terms the "Family Fairness" policy in November of 1987. In Chicago, the local version of this program was implemented in February, 1988 with an announcement by the

District Director that the INS would grant Indefinite Voluntary Departure status (I.V.D.) on a case by case basis "where an applicant demonstrates compelling humanitarian factors which warrant such relief."

Though the Chief Legalization Officer for our district defined this program for the QDEs as an incentive program to encourage those who have ineligible family members to apply for Legalization, it has instead created an atmosphere of fear and confusion, adding enormously to the amount of misinformation in the community. Because the Family Fairness application is not covered by the confidentiality provisions of IRCA, those applicants who are denied I.V.D. are being immediately issued an I-210, an order to leave the country in 30 days. Already, 14 families have been issued this order as a result of their attempt to stay together.

Though the INS claims that it does not intend to initiate deportation proceedings against these individuals, legally it has every right to do so. The effect that this had on the pregnant Polish woman, who walked into INS with hope of gaining I.V.D. and work authorization for her ineligible husband, only to walk out with an order for him to leave the country on the day she was due to deliver, is understandably chilling. We are watching the immigrants' worst nightmares about Legalization, that it be used as a vehicle to send people back to where they came from, come true with the Family Fairness Program.

QDEs are now in the position of explaining to those who ask us for information about Legalization and Family Fairness that the former is confidential while the latter isn't. To make matters worse, the criteria for granting I.V.D. status have not been articulated, which adds to the confusion of the many families who fear separation. Rather than encouraging families with ineligible members to come forward for Legalization, the implementation of the Family Fairness Program is frightening them away from the process entirely.

From the QDE perspective, the human cost of these and other problems this program has presented during the last 11 months is exceedingly high. We are hard pressed to correct the misinformation and soothe the fears of those who are coming forward with their fears now, and we know that there are many more who are refraining from bringing in their questions. We are doing everything within our power to maximize the number of immigrants who will benefit from this program in the time remaining; however, our experience shows that there are many more still in the shadows who have yet to be reached. Surely Congress intended them to receive the benefit of Legalization. As community agencies, we feel strongly that the application period should be extended by a year in order to give them that opportunity.

Senator **Kennedy**. We look forward to Senator Exon's statement. As you know, Senator, I guess we are voting at about 10:15 a.m. or so. We will follow whatever procedure that is suitable to your schedule. We want to thank you for coming.

Senator **Exon**. I also want to thank you for your cooperation in the areas in which you have been most interested. You have introduced legislation concerned about the eligibility of the illegals for various public assistance programs. We have dealt with that issue in the legislation which Senator Simpson very skillfully led the Senate and the Congress on in the last session.

I know you have got additional areas of interest and concern. We look forward to hearing from you this morning. We will proceed in whichever way you care to proceed.

STATEMENT OF HON. J. JAMES EXON, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator **Exon**. Mr. Chairman, thank you very much. I am going to be relatively brief and, if necessary, if we get into a vote situation I can put my statement in the record, so please feel free to interrupt me, but I am not going to be lengthy.

First, I am delighted that you have given me the time this morning to talk a little bit about the measure that I have introduced. I am particularly pleased to see my two good friends, the chairman and the ranking member of this subcommittee, Senator Simpson, sitting there this morning listening to me.

I heard both of you on the way down this morning on the radio.

Senator **Simpson**. We get paid for that. [Laughter.]

Senator **Exon**. You must have come out of that room there and come right in here, and I am delighted to say that I am pleased to see that you are both on record for a line-item veto of the President of the United States. I did want you to know that I listened to you very carefully this morning.

Before I get into the matter at hand, I would just like to comment on a side issue, Mr. Chairman. The committee knows that the President has recommended Judge William Cambridge of Hastings, NE, to fill a long-term vacancy on the U.S. District Court in Nebraska.

The paperwork is up here; he has been fully cleared. There has been some delay not because of the fault of Judge Cambridge. I would recommend that, if possible, his confirmation process be expedited because of the caseload and workload in Nebraska.

Judge Cambridge has the unanimous, active support of all of the Nebraska delegation both in the House and the U.S. Senate, and I would urge——

Senator **Kennedy**. Let me give you assurance that we will inquire about it even while you are testifying. We are meeting in the Judiciary Committee this afternoon.

Senator **Exon**. Thank you.

Senator **Kennedy**. The individual who has been selected to review those judges is our good friend from Vermont, Senator Leahy, and I will mention it to him about your statement this morning.

Senator **Exon**. Thank you very much, Mr. Chairman.

Mr. Chairman, in 1986 the Congress made good progress in the effort to control illegal immigration into the United States, and I salute the great leadership of Senator Simpson and you, Mr. Chairman, in that particular area.

While I took only limited part in the debate, I think that you know all the way through these very difficult matters that required the leadership that you both gave, this Senator generally was with you on the votes because I think it was a problem that needed to be addressed, but few had the courage to address it because of the complications and the political pitfalls connected therewith. I was very proud of the way both of you handled that difficult matter.

By making it illegal to hire illegal aliens, the Congress removed one of the magnets for illegal immigration. Another magnet remains. That attraction to illegal immigration is the real or perceived availability of government benefits to illegal aliens.

The Congress went some ways in that area. I think that the legislation that I have proposed goes even further. I hope it will receive favorable consideration by the committee, and I am certainly willing to work out any reasonable agreement that you people who are experts in this area feel would be necessary.

You both mentioned, and it is true, that during the consideration of the Kennedy-Simpson bill I withdrew my amendment on illegal aliens and Federal financial benefits and agreed to introduce the legislation as a freestanding bill.

I thank the distinguished chairman and Senator Simpson for their kind offer to hold hearings on this legislation so promptly. S. 2275, which I introduced earlier this week, would establish a government-wide policy that direct Federal financial benefits not be paid to illegal aliens unless specifically provided by the Immigration and Nationality Act.

Over the years, the Congress has crafted ad hoc qualifications in federal benefit statutes. At times, due to congressional inaccuracy or expansive court interpretations, these statutes have been used to provide Federal financial benefits to illegal aliens.

This situation has led to the payment of unemployment benefits, Social Security benefits, health care benefits, and housing benefits to individuals who have no legal right even to be in the United States.

Unfortunately, the issue of Federal payment to illegal aliens has only become a serious issue in recent years, and I suggest it is very likely to get much worse in the future. There are few comprehensive studies available to get a handle on this problem. The studies which are available are alarming and point to a dangerous drain on the Nation's resources as our budget problems worsen and our population and the population of illegal aliens go forward in age.

The Social Security Administration found that in 1986 illegal aliens drew more than $17 million in benefits. It is estimated that by the year 2026, more than 155,000 illegal aliens will be eligible for Social Security benefits, costing the taxpayers as much as $8 billion a year.

In 1983, the Arizona Hospital Association estimated that the taxpayers absorbed $4.4 million a year in unpaid hospital expenses of illegal alien patients, costing paying patients an average of $10.10 per day.

In 1980, a study revealed that in Los Angeles County illegal aliens apply for $36 million in social services each year. Some of these services were financed with Federal dollars.

In 1984, the California Enforcement Development Office estimated that the State paid $100 million a year in unemployment benefits to illegal aliens, and in 1982 the Illinois Attorney General's Office found that 50 percent of the noncitizen unemployment insurance applications were ineligible illegal aliens.

In an era of massive Federal deficits, even small instances of waste, fraud and abuse cannot be tolerated. The Federal Government must ensure that limited Federal funds go to their intended beneficiaries.

The Congress made good progress in requiring the verification of status for certain entitlement programs and in authorizing the Systematic Alien Verification for Entitlement programs, better known as the SAVE program.

However, these steps contained in the Immigration Reform and Control Act of 1986 can only be as effective as the interpretation of the various underlying benefit statutes.

I expect the opponents of this legislation to ask for sympathy for the illegal aliens who have come to depend on the generosity of Uncle Sam. They will certainly cite some compelling stories about illegal aliens in unfortunate situations, and I am most sympathetic. However, there are stories as dire and as compelling among our own citizens.

When our Nation is facing a $200 billion deficit and the constraints of the Gramm-Rudman law, Federal dollars paid to illegal aliens, sympathetic or otherwise, are literally dollars taken away from one of our own citizens or someone who has a legal right to be in the United States.

This legislation gives the Congress an opportunity to set the record straight. I offer this legislation as a starting point for discussion of a very serious problem.

In conclusion, Mr. Chairman, I welcome your expert advice and that, certainly, of Senator Simpson who has been a prime mover in this whole area. The observations that I am making here today are said with the understanding that I am most willing to work with the members of this committee and the Immigration and Naturalization Service to fashion legislation which will serve both as a means to control illegal immigration and a means to control budget deficits.

Without the real or perceived attraction to Federal benefits, illegal immigration will be deterred, and we have to do that, it seems to me, if we are going to straighten out this problem. Without the seepage of benefits away from the intended beneficiaries, I think that the legislation I offer will make certain that taxpayers' money is properly and legally saved.

Mr. Chairman, thank you very much, and I appreciate your time in hearing me.

Senator **Kennedy**. Thank you, Senator Exon. As you know, under the 1986 legislation of Senator Simpson, illegal aliens are ineligible for AFDC, Medicaid, unemployment compensation, food stamps, public housing, and much more.

There are also provisions in that legislation, called Project SAVE, which is an effort by INS to work with the States to try and determine the extent beyond the prohibition where there is utilization of those services.

This is, I know, a concern to you. It has been a general concern to the committee as a whole, but we are glad to hear you and we take note of your interest in this particular program. We look forward to sharing whatever information we have on this with the Senator from Nebraska.

Senator EXON. Thank you, Mr. Chairman.

Senator KENNEDY. I have no questions. I would yield to the Senator from Wyoming.

Senator SIMPSON. Mr. Chairman, I thank you and I thank Senator Exon for his interest; it is very helpful.

The SAVE program has just been signed by our Governor, a man of your political faith, I might add; a lawyer, though. I knew that would tear you up. [Laughter.]

Governor Sullivan signed that just this week. Wyoming is the 22nd State, I believe, to enter into the SAVE program. It cannot, however, deter those aliens who the courts have decided are permanently residing under color of law in the United States, a judicial interpretation.

Do you have any thought about the SAVE program? Will it achieve some of the goals you seek, do you think?

Senator EXON. Yes. I referred to the SAVE program and said I thought it was a good one, Senator Simpson, and I think that that is an important step in the right direction. I guess I would simply say that the legislation that I am suggesting would just lend further clarification of what we have in mind. I guess it is a further extension and a better definition, in my view, of what the SAVE program itself is trying to do.

Senator SIMPSON. I think it does meet that test of what we call the PRUCOL aliens, those permanently residing under the color of law.

I thank you very much, Mr. Chairman.

Senator KENNEDY. Finally, Senator, as I understand it, William Cambridge's name arrived in the Senate Judiciary Committee only yesterday to fill a November 1987 vacancy.

Senator EXON. That is correct.

Senator KENNEDY. So we take note of your early intervention on this and we will bring it to the attention of the Committee.

Senator EXON. Yes. Certainly, the delay in this judgeship has nothing whatsoever to do with any other delays or the illness of the chairman of the committee or any of those things. I was not so indicating. Thank you for making that point clear.

I just would say that if there are going to be some expedited procedures on some of the judges that I heard there might be, I urge the committee to include Judge Cambridge because there is absolutely no controversy now with regard to this nomination.

Senator KENNEDY. Very fine. I thank the Senator.

The Senator from Florida, Senator Chiles, is on the floor now. He is the floor manager of the budget bill. As I understand it, he is now managing the budget bill and he would like to appear with the second panel. He is going to make every effort to do so after this pending vote, so we will try and accommodate him.

We will have more information after this next vote whether he is able to excuse himself from the floor.

We will proceed with Commissioner Alan Nelson and then we will return to the second panel with the Senator from Florida. We welcome once again Commissioner Alan Nelson of the Immigration Service. He and his colleagues have undertaken an enormous task in implementing the immigration reforms passed by Congress. We have enjoyed working with them in partnership in pursuing our joint goal of making the program work.

We have differed from time to time, but our goals have been the same. We welcome again his updated report to the subcommittee of the progress achieved and the problems encountered since our last oversight hearing. We look forward to hearing him.

STATEMENT OF HON. ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. NELSON. Mr. Chairman, thank you very much. It is a pleasure to appear before you and Senator Simpson on the continued oversight of the immigration bill. If I might make two comments before we get into the oversight, one, I would like to on behalf of the Immigration Service congratulate you, Mr. Chairman, and you, Senator Simpson, for your outstanding efforts in the passage of your legal immigration bill just about a month ago, a tremendous effort and a great accomplishment.

Senator KENNEDY. Thank you.

Mr. NELSON. On behalf of the administration, we look forward to working with you and the House, and we are encouraged by indications that the House might be willing now to move forward. We think there is a good opportunity this year to get a legal immigration bill and we will work with you on that.

It is important that the immigration subject has been bipartisan, is now and will be in the future, and so whether we get a bill this year, at least we have established a foundation, no matter who the next President and the next Congress is. Again, we are committed to working with you.

Senator KENNEDY. Very good.

Mr. NELSON. The second item, Mr. Chairman, is another item of testimony which I would like to submit for the record, a brief two-page statement accompanying our budget material, since I understand this really also is an authorization hearing.

As Senator Simpson mentioned, it sets forth our request for the fiscal year 1989 budget and the personnel, and I would only say, as Senator Simpson points out, this incorporates or solidifies the increases that the Immigration Service has had to implement the immigration bill.

It is very important that we keep those levels. We know there are a lot of budget pressures out there, but this is basically a standstill budget from the 1988 levels and it is very important that the Congress pass the President's budget as submitted for fiscal year

1989, and we would urge your support and also certainly avoid any cuts in that that we would hope would not come.

Moving, then, Mr. Chairman and Senator Simpson, to the issue at hand on the review of the Immigration Reform and Control Act of 1986, again, we would like to submit our full testimony for the record, which encompasses a great deal of information on that matter.

I think it is fair to say, as I believe both of you have alluded to, that this bill has worked, and I think the Congress should be proud of its efforts in passing IRCA. I think the administration can rightly be proud of how we have implemented it.

If you look at the long period to develop this law, this was a healthy debate and a very effective one. We came up with the right tools. There are no other procedures or tools to deal with the problems of illegal immigration other than what IRCA contains—the enforcement elements of the border enforcement; effective job market enforcement, particularly the employer sanctions provision; the effective entitlements enforcement, what Senator Exon and your discussion alluded to a moment ago, the SAVE program and other elements; and dealing effectively with the criminal aliens to be sure they are deported once they serve their sentences.

That is in balance, then, under IRCA, with the legalization provisions, the SAW, the Special Agricultural Worker provisions, registry, Cuban-Haitian, and others; again, a good, balanced bill and I think we can all be proud of the efforts to date. We think it will continue to be an effective bill.

Let me quickly run over the various enforcement elements first. On the border under, again, the budget increases, we are in the process of adding another thousand people on the border. I think our border efforts have been very significant.

On the aspect of apprehensions, this chart before you, the green line at the top is fiscal 1986, showing the monthly apprehensions at the border. The blue line is fiscal 1987, which showed largely over a 30-percent drop. The red line is our current fiscal year.

As noted, we have had some increases here in the last few months, January, February, and March 1988, higher than last year, but still substantially below the high levels of 1986.

So we are very confident that IRCA has had an impact, and will continue and grow because, of course, we are still facing, with the agricultural area and other factors, some pressures for——

Senator KENNEDY. Can I just ask, you have the numbers of apprehensions in thousands, so that means that approximately for the month of March or so, February and March of 1988, that that is 100,000, 110,000 a month?

Mr. NELSON. That is correct.

Senator KENNEDY. Apprehensions?

Mr. NELSON. That is correct, on the Mexican-United States border, which, of course, is almost all the apprehensions we have.

Senator KENNEDY. Okay.

Mr. NELSON. I think it is also significant—when we talk about illegal aliens, there are a lot of problems, but the drug issue we are all very concerned about. And I think probably one of the——

Senator **Kennedy**. Since you put the chart up, can you give us some idea why it appears in 1988 that it is going up somewhat higher than where it was in 1987?

Mr. **Nelson**. This, Mr. Chairman, of course, is one of those difficult things to know, but there are several things.

Senator **Kennedy**. Commissioner Nelson, we have Senator Chiles here. You have been terribly accommodating.

Mr. **Nelson**. I am most pleased to defer to the Senator.

Senator **Kennedy**. He is the floor manager of the legislation that we have on the floor, and we will obviously have your testimony in a coordinated way, but if you would accommodate it, we would be very grateful.

Mr. **Nelson**. Thank you. I would be most pleased to, Mr. Chairman.

Senator **Kennedy**. We welcome the Senator from Florida, Senator Chiles. He has introduced important legislation dealing with alien felons and we are happy to have the opportunity today to hear him.

We are particularly grateful because we know you intended to offer those amendments on the immigration legislation, but restrained on that, and so we are grateful to you for the cooperation.

We also have Lt. Dave Smith, of Orlando. We know both of you worked on the legislation. And we have Wade Henderson, who is associate director of the Washington office of the American Civil Liberties Union.

STATEMENT OF A PANEL CONSISTING OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA; DAVE SMITH, POLICE LIEUTENANT, ORLANDO, FL; AND WADE J. HENDERSON, ASSOCIATE DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

STATEMENT OF SENATOR CHILES

Senator **Chiles**. I thank you, Mr. Chairman, and I appreciate your interest and the subcommittee's willingness to hear our testimony today. You told us that you would provide a hearing for us on our legislation. I appreciate your doing this, and I thank Commissioner Nelson for allowing me to interrupt him.

A year ago, I introduced my package on alien felons and I found I had to describe these criminals. Today, I simply have to say the Jamaican posses, the Haitian crack syndicates, and there is immediate recognition.

The fact that thousands of aliens have been associated with illegal drug enterprise in this country is a chilling collaboration. The coupling of two of our greatest problems, illegal immigration with narcotics, has created a very lethal combo on our streets. Indeed, it has raised hell in our legal systems coast to coast.

The most disturbing aspect of the problem is the success and financial rewards. This coupling has drawn more and more aliens across our borders, and it is a sad irony at a time when this country is finally cracking down on the hiring of illegal aliens to pick crops that thousands are being now smuggled into the country to man illegal enterprises, and they are being brought in just for that purpose.

Mr. Chairman, these criminals are well known to our enforcement agencies. The Bureau of Alcohol, Tobacco and Firearms describes the Jamaican posses as staking out a large piece of the nation's most violent criminal territory. They are known to be involved in over 600 drug-related murders, as well as kidnapping, heavy narcotics trafficking, domestic and internal gun trafficking, robberies, assaults, money laundering, and fraud.

The U.S. Customs Service has documented that major drug trafficking organizations are reportedly exploiting Haiti as a base of operations, as a staging area, and as a rendezvous point for the transit of bulk quantities of cocaine, heroin, and marijuana.

Additionally, opportunistic Haitian groups are forming their own trafficking organizations in the United States and other areas in the Caribbean. Just this week, the General Accounting Office testified at a PSI hearing on organized crime in this country and the GAO stated organized crime groups are preparing to flee Hong Kong when control of that territory reverts back to mainland China.

Additionally, the Maxi trial in Sicily is causing organized crime members to consider emigrating because of fear of prosecution. So for the first time, Mr. Chairman, we find that the Italians are cracking down on the Sicilian Mafia and therefore they are coming into this country, fleeing prosecution there. That tells us something about some of the problems we have with our laws when we see that happening.

Colombian drug cartel members are seeking to expand their operations in the United States, and the INS must vigorously enforce the exclusion laws and develop working relationships with the police of other nations to prevent criminals from entering the United States. Taking action now is going to prevent those organized criminal groups from establishing a base in this country.

Mr. Chairman, I could describe in detail the stereotype of the alien felon. Instead, I think it would be much better if I introduced to you Lt. Dave Smith, who is the commander of the police drug unit in the Orlando Police Department.

I have known Lieutenant Smith for a number of years and I am continually impressed with his dedication and knowledge. He is a member of one of the finest narcotics squads in Florida. The Orlando Police Department was ranked number one in nationwide competition for Federal dollars for narcotics and street enforcement.

He has also been involved in an intelligence network made up of narcotics officers throughout the State of Florida, and through that network he has learned an awful lot of aliens' involvement in drug trafficking.

He has put together some information and charts which I believe will help the subcommittee to understand the extent of the problem, and when he is finished I will discuss my legislation.

I want to say at the outset that the first time I met Lieutenant Smith was when I went to a meeting of some law enforcement officers that they were holding in the lower east coast. At that time I just said I am interested in trying to see how we can help in fighting drugs.

The frustration and sort of bitterness that I had come out at that meeting and the feeling like "where the hell have you been, nobody has helped us over all this time," is something that I have never forgotten.

These fellows are out at night on stake-outs and everything else, continually trying to protect our kids. Dave is a member of a group that has worked very, very hard at that and I think he can tell so much more graphically than I can what the need is out there.

Senator KENNEDY. Lieutenant Smith, we are glad to have you here.

Mr. SMITH. Thank you.

Senator KENNEDY. You may make whatever comments you wish to make.

STATEMENT OF DAVE SMITH

Mr. SMITH. In Orlando, FL, the number of illegal aliens who deal in crack cocaine has increased by more than 300 percent in the past 24 months. Although some of our recent enforcement efforts of local law enforcement have somewhat stabilized this drug trafficking by illegal aliens, one major problem remains.

That problem is the identification, pre-trial detention, and successful prosecution of these illegal aliens. Less than 5 percent of all illegal aliens arrested by the Orlando Police Department for narcotics violations have been successfully prosecuted.

A typical case scenario is one in which an illegal alien is arrested for trafficking in cocaine, booked into jail, and bond is set. These illegal aliens bond out and are never seen or heard from again until they surface in another jurisdiction under a different name.

It is not uncommon to find Haitian drug dealers in possession of several pieces of identification in different names. At the execution of one search warrant in Orlando, we found a Haitian crack dealer in possession of eight different Social Security cards in different names in his wallet, along with $10,000 in cash.

In another case, a Haitian drug dealer was stopped at the Orlando International Airport bound for Haiti with $26,000 in cash in his possession.

We are told by Haitian informants that the proceeds from drug transactions are being taken to Haiti to finance the government. We are also told that Haitians are recruited and smuggled into the United States for the sole purpose of dealing drugs.

Through intelligence sources, we have documented a formal network of drug trafficking by Haitian dealers. Cocaine from Colombia is taken to Haiti and Cuba. It is then transported to the Caribbean islands and then smuggled into south Florida. From there, the cocaine is converted into crack and transported to central Florida for street sales.

In addition to drug trafficking, we have observed a transformation among the Haitian drug dealers in the past 2 years. They have become more and more violent and many are now carrying weapons during these drug transactions.

In the Orlando area, we are also experiencing an increase in the number of Jamaican drug dealers. These individuals account for approximately 80 percent of all the marijuana business in central Florida.

Recently, a trend has developed where the Haitians and Jamaicans are starting to work together in the cocaine distribution business.

Our present system encourages illegal aliens to come into Florida for the purpose of dealing drugs. The enticement of making thousands of dollars per week dealing drugs, with the only consequence being paying a fine, changing a false identity, and relocating, is too good to pass up.

Senator CHILES. Mr. Chairman, the bill, S. 973, would stiffen the penalties for a deported alien felon who re-enters the United States by providing for a three-tiered penalty system, again, distinguishing the alien from the alien felon.

It is now a criminal offense for any deported alien to re-enter the United States. That is a criminal offense. My bill would increase such penalties for the aliens convicted of felonies and aggravated felonies.

So, really, we are trying to make a distinction here that an illegal alien is one thing, and perhaps an illegal alien is entitled to certain rights which, through our legislation, we have decided to give those people.

But an illegal alien felon is another creature entirely. That is someone who has come to our country illegally to start with, but then while he is here is engaged in and been convicted of a felony. That person certainly should not be treated the same way and we have got to levy heavier penalties.

So the first bill, S. 972, would require mandatory detention of felons convicted of aggravated felonies—murder, rape, kidnapping, and attempts at such drug trafficking. The bill would deny voluntary departure or conditional parole for such felons and require them to be turned over immediately to the custody and responsibility of the Attorney General.

Right now, the States are finding themselves as being the repository and then these people get out. They make a bond, they disappear again, or they voluntarily depart and then they come back.

Once that illegal alien is convicted of an aggravated felony, he should be remanded to the custody of the Attorney General so that we know that he is going to be deported. Now, all of us, I think, have agreed that there are some responsibilities that an alien has when he comes to this country if he seeks to become a citizen.

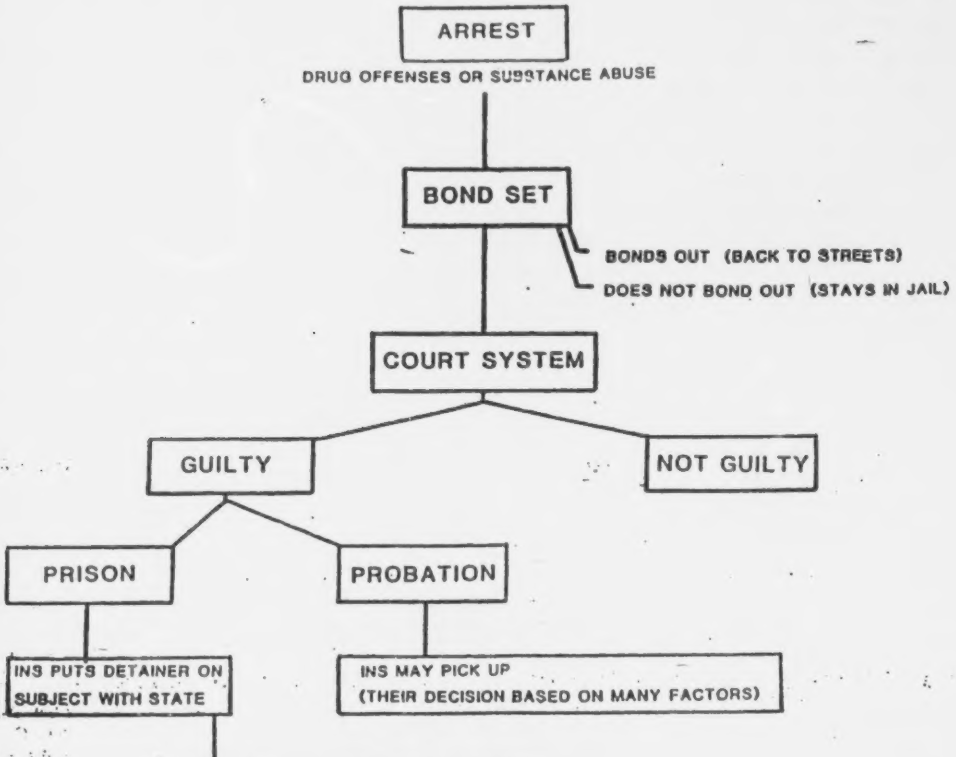
Certainly, when he engages in and is lawfully convicted of a felony, an aggravated felony, he has not kept those responsibilities. There is no reason that we should keep that person. In fact, there is every reason that we should see that he is deported.

So it is important to note here, Mr. Chairman, that my bill is not intended to circumvent or increase the felon's sentence. It is my belief that alien felons should be distinguished from other aliens that they ought to be detained—that is, incarcerated—until they are indeed deported.

Now, in the process of how we set up the system—do the committee members have copies of this chart.

[Chart follows:]

LEGAL OR ILLEGAL ALIEN


ARREST
DRUG OFFENSES OR SUBSTANCE ABUSE
BOND SET
BONDS OUT (BACK TO STREETS)
DOES NOT BOND OUT (STAYS IN JAIL)
COURT SYSTEM
GUILTY
NOT GUILTY
PRISON
PROBATION
INS PUTS DETAINER ON SUBJECT WITH STATE
INS MAY PICK UP (THEIR DECISION BASED ON MANY FACTORS)
INS PICKS UP AT END OF SENTENCE (SAME AS ARREST)
BOND SET
BONDS OUT
DOES NOT BOND OUT
BEFORE JUDGE
DEPORT
NOT DEPORT
WARRANT OF DEPORTATION
APPEALS SYSTEM (SUBJECT PROBABLY ON STREETS) MAY TAKE SEVERAL YEARS

INS – IMMIGRATION AND NATURALIZATION SERVICE

Senator CHILES. The bill that I am talking about, S. 972, would not come into play until we reach sort of the bottom of the line after conviction. So we are not changing anything to do with the court system and how it works.

We are saying that after that felon has been convicted, after he has then served his sentence, but at the end of that process he would be turned over to the Attorney General. INS would pick him up. We would then mandatorily detain him until we deport him.

At that stage, there is no reason to turn these people convicted of aggravated felonies over to a bonding process or anything else. They have certainly given up any rights that they might have had under any responsibility of that.

I mentioned S. 973 to strengthen the penalties. It would provide that any deported alien convicted of aggravated felonies who tries to re-enter the United States could get a mandatory 15-year sentence.

The provision is aimed at getting the felon on at least the immigration charge, if not the drug offense, and to deter aliens that have been convicted of felonies from re-entering the United States. It certainly sends a message to those who attempt to re-enter that we will not let our borders be revolving doors for criminals.

The third bill, S. 974, would make it a criminal offense for refusal to appear at an immigration proceeding or a deportation or exclusion hearing, and provide for fines up to five years or $5,000.

The provision is intended to strengthen the immigration proceedings and decrease the number of instances when felons refuse to honor subpoenas and show up for hearing.

S. 975 would broaden the current law to impose criminal penalties against those persons who knowingly assist aliens convicted of drug offenses in entering the United States. Current law authorizes criminal penalties against those who assist other subversive aliens—terrorists, spies—to enter the United States. This bill would include drug criminals into that category.

Right now, we know from testimony that we are getting from the Alcohol and Firearms people, Customs people, DEA and others that there is an actual movement to bring in some of these tough guys purely for illegal drug purposes. So this provision is directed at those in the United States who recruit or assist drug felons in other countries to come to us.

An informant has told our Government Affairs Subcommittee that many Haitians are brought to the United States illegally for the sole purpose of dealing in drugs.

The last bill, S. 976, would require linkage of the INS computers with the National Crime Information Center and other computerized criminal indexes. This would include receiving information as well as transmitting information to the indexes on the identities of aliens convicted of felonies, including information about warrants.

I hear every place I go in Florida what Lieutenant Smith has said to us today. They arrest a Jamaican, a Haitian. They charge him, he makes bail of $20,000, maybe, and he disappears.

The next thing they find out through their network of intelligence is he is arrested in Tampa or St. Augustine or Jacksonville under another name, another alias, and by the time they pick him through fingerprints or other things, he is out on the street and bonded again and then he is arrested again.

Now, when you understand that only 5 percent of the people arrested in Orlando have ever been convicted, you understand the extent of the problem and how frustrating that is to law enforcement officers.

They go out and they make the cases, sometimes have to use force with these people, risk their lives, and then these people are gone. And the next time they find out, they come in their own district under another name or they are arrested somewhere else.

So the last bill would require that kind of linkage, so at least INS would be able to keep track and would be in the net and you would be able to try to enforce the deportation proceedings at an earlier date.

So this provision is directed at enhancing cooperation between the State and local law enforcement, FBI, DEA, and INS. Currently, INS is allowed to access information from the indexes, but they do not submit data. With the thousands of alien felons in this country, it is critical for law enforcement to obtain immigration status and history of each of these felons.

Mr. Chairman, these bills touch on the immigration changes I think would be helpful in trying to deal with the alien felon, but other changes are needed in the statutes to effectively address the thousands of alien felons in this country.

The problem is just too big for the INS alone. I think the full Judiciary Committee should recommend that the Justice Department make these felons a priority. At least the Organized Crime Drug Enforcement Task Force should be given adequate resources and manpower to combat and prosecute these criminals.

Action should be taken now. We have got to make these dealers in other countries respect our laws, and as long as that respect is lacking, they are going to keep coming. We all know we have an insidious supply of drugs and dealers in this country. We do not need more drugs and we certainly do not need more dealers.

In my view, we are not just getting more dealers; we are now inviting more dealers. Our process that we have now simply invites them. Alien felons are rapidly becoming a new and most violent network of organized crime in this country, and until our policy confronts the alien felon, there is that standing invitation to come.

As I say, given the fact that Italy is cracking down on the Sicilians and given the fact that the China gangs are starting to flee and the Japanese gangs are now moving into this country, I think that we really have to move.

[Prepared statement of Senator Chiles follows:]

STATEMENT OF

SENATOR LAWTON CHILES

before the

Subcommittee on Immigration and Refugee Affairs

Senate Judiciary Committee

April 14, 1988

Good morning. Mr. Chairman, I appreciate your interest and the Subcommittee's willingness to hear testimony today on the vast problem the alien felon has caused in our legal system and to our people.

A year ago when I introduced my package of legislation on alien felons, I found I had to describe these criminals.

Today, I simply have to say:

Jamaican posses

Haitian crack syndicates

and there is immediate recognition.

The fact that thousands of aliens have been associated with illegal drug enterprises in this country is a chilling collaboration.

The coupling of two of our greatest problems - illegal immigration with narcotics - has created a lethal combo on our streets. Indeed, it has raised hell in our legal systems coast to coast.

And, the most disturbing aspect of this problem is that the success and financial rewards of this coupling have drawn more and more aliens across our borders. It is a sad irony that, at a time when this country is finally cracking down on the hiring of illegal aliens to pick crops, thousands are being smuggled into the country to man illegal drug enterprises.

Mr. Chairman, these criminals are well known to our enforcement agencies. The Bureau of Alcohol, Tobacco and Firearms describes the Jamaican posses as "staking out a large piece of the nation's most violent criminal territory. They are known to be involved with over 600 drug-related murders, as well as kidnapping, heavy narcotics trafficking, domestic and international gun trafficking, robberies, assaults, money laundering and fraud."

The U.S. Customs Service has documented that "major drug trafficking organizations are reportedly exploiting Haiti as a base of operations, as a staging area, and as a rendezvous point for the transshipment of bulk quantities of cocaine and marijuana. Additionally, opportunistic Haitian groups are forming their own trafficking organizations in the U.S. and other areas of the Caribbean."

And, just this week, the General Accounting Office testified at a PSI hearing on organized crime in this country. The GAO stated: "organized crime groups are preparing to flee Hong Kong when control of that territory reverts back to mainland China. Additionally, the "Maxi Trial" in Sicily is causing organized crime members to consider emigrating because of fears of prosecution. Colombian drug cartel members are also seeking to expand their operations in the U.S. The INS must vigorously enforce the exclusion laws and develop working relationships with the police of other nations to prevent criminals from entering the U.S. Taking action now will prevent these organized criminal groups from establishing a base in this country."

Mr. Chairman, I could describe in detail the stereotype ot the alien felon. Instead, I want to introduce to you Lt. Dave Smith, Commander of the Police Drug Unit of the Orlando Police Department.

I have known Lt. Smith for years and am continually impressed with his dedication and knowledge. He is a member of one of the finest narcotics squads in Florida. The Orlando Police Department was ranked number 1 in the competition for Federal dollars for narcotics street enforcement.

He has also been involved in an intelligence network made up of narcotics officers throughout the state of Florida. Through this network he has learned much about the aliens' involvement in drug trafficking.

Dave has put together some information and charts which I believe will help the subcommittee understand the extent of this problem. When Dave has finished, I will discuss my legislation.

***

My first bill, S. 972, would require mandatory detention of felons convicted of aggravated felonies (murder, rape, kidnapping or attempts at such and any drug trafficking). My bill would also deny voluntary departure and conditional parole for such felons and require that their custody be the responsibility of the Attorney General. This bill also requires immigration officials to give priority to cases involving felons.

Mr. Chairman, it is important here to note that my bill is not intended to circumvent or increase the felons' sentences. It is my belief that alien felons should be distinguished from other aliens and should be detained - that is incarcerated - until they are indeed deported.

S. 973 would stiffen the penalties for a deported alien felon who re-enters the U.S. by providing for a three-tiered penalty system - again distinguishing the alien from the alien felon. It is now a criminal offense for any deported alien to re-enter the U.S. My bill would increase such penalties for the aliens convicted of felonies and aggravated felonies.

1st tier: any deported alien who re-enters: up to 2 years and up to $1,000 (or both);

2nd tier: any deported alien convicted of felony who re-enters: up to 5 years and up to $10,000 (or both);

3rd tier: any deported alien convicted of aggravated felonies who re-enters: mandatory 15 years and up to $20,000.

This provision is aimed at getting the felon on at least the immigration charge if not the drug offense, and thus deter aliens from re-entering the U.S. It certainly sends a message to those who attempt to re-enter our country that we won't let our borders be revolving doors for criminals.

My third bill, S. 974, would make it a criminal offense for refusal to appear at immigration proceedings (deportation, exclusion, etc.) with fines up to 5 years and up to $5,000, or both.

This provision is intended to strengthen the immigration proceedings and decrease the number of instances where felons refuse to honor subpoenas and show for hearing. There has been an increasing number of aliens who abscond from their hearings and by imposing criminal penalties for the first time for such refusal, it is hoped that the alien as well as the public will give more respect to such proceedings.

S. 975 would broaden current law to impose criminal penalties against those persons who knowingly assist aliens convicted of drug offenses in entering the U.S. Current law authorizes criminal penalties against those who assist other "subversive aliens" (terrorists, spies, etc.) to enter the U.S. My bill would include drug criminals in that category.

This provision is directed at those persons in the U.S. who recruit or assist drug felons in other countries to come to the U.S. to deal in drugs. An informant told my Governmental Affairs subcommittee "that many Haitians are brought to the United States illegally for the sole purpose of dealing drugs and to recruit other Haitians for the drug business." Drug enforcement officials have evidence that such recruitment is common among other alien groups. This practice must be stopped.

My last bill, S. 976, would require "linkage" of INS computers with the National Crime Information Center and other computerized criminal indexes. This would include receiving information as well as transmitting information to the indexes on the identities of aliens convicted of felonies, including information about warrants.

This provision is directed at enhancing cooperation between state and local law enforcement, FBI, DEA and INS. Currently, INS is allowed to access information from the indexes but does not submit data. With the thousands of alien felons in this country, it is often critical for law enforcement to obtain immigration status and history of such felons.

Mr. Chairman, my bills touch on immigration changes I think would be helpful in dealing with the alien felon but other changes are needed in criminal statutes to effectively address the thousands of alien felons in this country. This problem is far too big for the INS alone. I think the full Judiciary Committee should recommend that the Justice Department make these felons a priority. In the least, the Organized Crime Drug Enforcement Task Force should be given adequate resources and manpower to combat and prosecute these criminals.

Action should be taken now. We must make dealers in other countries respect our laws. As long as that respect is lacking, they will keep coming.

Mr. Chairman, we have an insidious supply of drugs and dealers in this country. We do not need more drugs. We do not need more dealers.

However, it is my view that we are not just getting more dealers - we are inviting more dealers. Alien felons are rapidly becoming a new, more violent network of organized crime in this country.

Until U.S. policy directly confronts the alien felon - a standing invitation will remain for more to come.

Thank you again for considering my legislation. I look forward to working with the Committee in addressing this critical problem.

Senator Kennedy. We thank you, Senator, for bringing this matter to the attention of the subcommittee. As you are probably familiar, we passed the Bail Reform Act in 1984 with the precise idea—and I know that you were very much involved in that—with the precise idea of being able to deal with this problem of bail.

If I recall right, we had a definition in that legislation about being a danger to the community, and if they believed that these individuals were going to flee the community we gave at least at the Federal jurisdiction level the ability of the courts to hold those individuals without bail.

I think it is something that I would hope in the area of drug-related crimes would be exercised by judges. We also had some other reforms included in that legislation. I do not know what the State of Florida is prepared to do.

Of course, if an individual is convicted of a felony, they are not eligible for legal entry in here in any event. If a person is picked up illegally and then is deported, they cannot come in here even legally for a period of five years, is my understanding.

Senator Chiles. No, sir, but they are doing it.

Senator Kennedy. I know, but that is wrong today.

Senator Chiles. Right.

Senator Kennedy. Whatever it is, it is illegal today.

Senator Chiles. Right.

Senator Kennedy. And they are subject to the criminal penalties which exist today. Maybe those ought to be increased.

Senator Chiles. Right.

Senator Kennedy. The concern, you know, that we probably have to deal with—I am glad the Commissioner was here during your testimony—is we were facing the situation with the Cubans, for example, where you had a number of them who were being detained and Cuba would not take them back.

So, we run into those particular problems where if they have served their term, they come back up here.

Senator Chiles. It looks like we finally worked that situation out.

Senator Kennedy. Sure, we have worked that out.

Senator Chiles. And we do not have that situation with the Jamaicans or the Haitians.

Senator Kennedy. That is very true, but I suppose the question is the type of individual you are describing here I would think would be the subject of deportation in any event. If they are here illegally and they commit a felony, I would think they would be subject to deportation under current law.

Senator Chiles. Mr. Chairman, they are the subject, but if they can make bond, if they can be released before they can go through that process, they disappear.

Senator Kennedy. Okay, but should that not be the State law? What is wrong with the State of Florida passing the same kind of legislation that we have done at the Federal level?

Senator Chiles. On the bonding thing, I think that is correct.

Senator Kennedy. That could be done at the State level. If it is such a problem there, it could be done at the State level.

Senator Chiles. But, remember, deportation is a Federal procedure.

Senator **Kennedy**. All right, but the holding of those persons that you described in Orlando and get picked up in Pensacola, that could be done at the State level. If they are picked up at the Federal level, the type of individual you described ought to be held without bail, I think, and I would hope that they are doing it.

And if it is done at the State level, why cannot the State of Florida pass similar legislation? Then you say, all right, then we hold them, and then I think there is a reasonable case, certainly, in terms of the deportation procedures.

Why do we not move ahead on it? I would be glad to have the Commissioner address that, but with regard to the type of individuals getting picked up, whether it is in my own State or in Florida, they get picked up in New Bedford and get picked up in Fall River and in Brockton. I would hope Massachusetts would do something about it.

Senator **Chiles**. Well, I would hope that, too. But, still, immigration is a Federal policy and the deportation is a Federal policy. And if it is our law that we are going to deport a convicted alien, then should we not when he comes out of that State prison—remand him to the Attorney General so that the Immigration and Naturalization Service, the INS, could then do that proceeding? That is what we are talking about in this legislation.

The State has done their job. They have convicted him, they have held him for his term. Now, if they hold him, what is to say that INS will ever come and process that case? He is being held somewhere in a State prison or in a State institution. It does not seem that that is a very good process even for due process for that convicted felon.

Senator **Kennedy**. Senator, I agree with you completely. After the felon has been in that prison and served time, INS ought to get on it, whatever coordination is needed ought to be worked out.

Senator **Chiles**. Good.

Senator **Kennedy**. I could not agree with you more. The problem that I see which we face all over—we face it in Massachusetts—they get in, they get bond, they get away on this thing, and that is troublesome.

Senator **Chiles**. I agree with that, and the State of Florida is trying to change its law.

Senator **Kennedy**. Since you have raised this, I was just asking the staff to try and detect how effective that has been in terms of the bail reform in targeting the drug dealers. That was certainly one of the purposes of the legislation.

We will inquire what procedure exists at the present time for the INS to move ahead with the deportation on that. As I understand it, there is a May 12 hearing on the effectiveness of the Bail Reform Act of 1984 in the committee. I am going to be interested in what the results are as well, but I will bring that to the attention of the members of the Judiciary Committee who will be chairing that hearing, as well as to Commissioner Nelson about how effective we are in dealing with this particular issue.

I think the Senator is absolutely correct in terms of seeing what we can do with it and we will follow up on it.

Senator **Chiles**. I thank you.

Senator **Kennedy**. The Senator from Wyoming.

Senator SIMPSON. Mr. Chairman, I thank you.

I think some do criticize these bills as excessively penalizing aliens, but as I see them and read them carefully, and the summary of them, it certainly appears to me that each of your bills applies only to aliens who have committed serious crimes or who have repeatedly violated our immigration laws, and I think that is an important distinction.

Do you feel that your bills in any way penalize an alien who simply attempted illegal entry into the United States, but has committed no other violation of law?

Senator CHILES. No, sir. The thrust of our legislation is really not in that regard. We are dealing with not the illegal alien, but the illegal alien felon, the one that has committed a felony once he is illegally here. And I think that is a totally different kind of individual and someone that we must deal with.

Senator SIMPSON. I do, too, and I think you have indeed signified that to us.

Then just one question of Lieutenant Smith. I would ask Lieutenant Smith what specific aspects of current immigration law most severely frustrate your antidrug activities.

Mr. SMITH. Our major problem is not arresting as far as from the local—we can arrest the people. We have the resources and the manpower to arrest the dealers. Our frustration is that we cannot hold them, or we do not even know who they are when we arrest them.

We know that they are illegal and we have no way—they come under the standard bond schedule like anyone else. Once we arrest that person and put them in jail, they will make a $25,000 bond like it is a fine and they are gone.

Senator KENNEDY. As a way of doing business.

Mr. SMITH. They are back in business. That is a cost of doing business with them. So they put up the bond money under a name. We do not even know who they are when we arrest them.

They move to a different jurisdiction or sometimes right within our same community and are right back in business the next day, and we end up with a warrant for an alias who we really do not even know who it is to begin with.

So identification—if there were a way to identify these people and hold them until they are identified that we arrest on any felonies, it would definitely help local law enforcement in Florida.

Senator SIMPSON. Thank you, Lieutenant. Thank you, Ted.

Senator KENNEDY. Thank you very much, Lieutenant. We appreciate your testimony, and I think all of us are impressed that in trying to deal with the problems that we are facing in the proliferation of prohibited materials, it takes a multifaceted way of coming to grips with this issue and we are glad to have your testimony.

Mr. Henderson, we are going to vote in just a few moments. So maybe if it is agreeable, we will just hear this and then vote and then we will go back to the Commissioner.

STATEMENT OF WADE J. HENDERSON

Mr. **Henderson**. Mr. Chairman and Senator Simpson, thank you very much for inviting me to present the views of the American Civil Liberties Union on Senator Chiles' bills. Obviously, in light of the committee's pressing schedule, I will summarize my statement and I would ask to submit the statement in the record.

Senator **Kennedy**. Yes, it will be included in the record.

Mr. **Henderson**. Let me just begin by saying that, you know, the American Civil Liberties Union and all citizens in this country are concerned about crime. We are concerned about the very things that Senator Chiles is trying to address by way of the legislation.

We feel, however, that the legislation is misguided, misguided in two significant respects. First, there is a misperception about the nature of the problem. I would cite, as I do in my testimony, recent studies by the General Accounting Office and others trying to examine and determine the magnitude of the problem of criminal aliens.

These studies point out that they rely on documentation from the Federal Bureau of Investigation as a way of trying to determine the number of criminal aliens here in the country, and that there is no reliable or accurate data to estimate the number of criminal aliens who are here.

As a result, there are frequently hyperbolic exaggerations of the volume of the problem which frequently distort the way Congress and the public at large look at these issues.

While I support the concerns expressed by Senator Chiles, I feel the characterization of the problem has been exaggerated, and therefore creates an impression that there is a need to do something far more drastic, and I support that assertion with some of the documentation which I have listed in the study.

Second, I would say that existing law amply provides protection to address many of the problems that Senator Chiles' bills would seek to deal with. Current immigration statute, section 241, provides ample authority to the Attorney General to arrest, apprehend and detain individuals who constitute a serious threat.

In fact, in 1986, in the Anti-Drug Act of 1986, and in the Immigration Reform and Control Act, Congress provided new authority for the Immigration Service to carry out responsibilities in this area. The GAO has assessed the implementation of that responsibility and has determined that it seems to be working well.

I will not enumerate on the specific problems that we have in the individual bills. I will, however, highlight two issues which I think are worth noting. One involves the question of detention, which the mandatory detention provisions of Senator Chiles' bills would generate.

I think, Mr. Chairman, you rightly point out that in examining the recent problems of Mariel Cubans in the Atlanta Penitentiary and in Oakdale, LA, the detention problem of aliens is a significant one. It is one that the INS is attempting to grapple with now.

There is an inadequate supply of space and the policy itself needs to be reexamined. These proposals would contribute to that difficulty and need to be examined in that light.

Second, the problem of the bill, S. 976, that would provide authorization for the INS to use the National Crime Information Center raises some especially troubling concerns. I have outlined a fairly substantial section in the testimony which focuses on that issue. I would encourage you to take a look at it. We feel that extending that authority is terribly misguided.

I would raise one last concern, which is to say that the emphasis that we have heard here this morning about the INS role in dealing with the drug problem needs to be examined as well.

There is a question as to whether the INS currently has sufficient statutory authority to engage in the kinds of activities which some of this legislation would suggest they are now dealing with. I have cited information in the testimony to address that issue.

Given the responsibilities that the Service has in a wide variety of areas, including the implementation of IRCA, we believe that it would be misguided, a detriment to civil liberties, and not particularly an advancement for the underlying purposes of the bill to see these statutes enacted.

Thank you very much.

[Submissions for the record follow:]

STATEMENT

OF

WADE J. HENDERSON

ASSOCIATE DIRECTOR

WASHINGTON OFFICE

ON BEHALF OF

THE

AMERICAN CIVIL LIBERTIES UNION

ON

CRIMINAL ALIENS AND INS ENFORCEMENT ACTIVITIES

S. 972; S.973; S.974; S.975;

AND

S. 976

BEFORE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

APRIL 14, 1988

Mr. Chairman and Members of the Subcommittee:

On behalf of the American Civil Liberties Union, I want to thank you for inviting me here today to present the ACLU's views on S.972; S.973; S.974; and S.975, bills to amend the Immigration and Nationality Act regarding the apprehension, detention, and deportation of alien felons. In addition, we have been asked to review S. 976, which would authorize access by the Immigration and Naturalization Service (INS) to the National Crime Information Center and to other information compiled in appropriate computerized indexes maintained by federal law enforcement agencies. The ACLU is a nationwide organization of 250,000 members committed to the protection of the bill of rights.

I am Wade Henderson, Associate Director of the ACLU Washington office. Janlori Goldman, staff attorney with the ACLU's Privacy and Technology Project, and Antonio Califa, legislative counsel with the ACLU, assisted in the preparation of this testimony.

Introduction

The proposals under consideration today involve two of the most complex, challenging, and seemingly unrelated issues facing our nation: the public's fear of crime and concern over the implementation of federal immigration policy regarding the disposition of suspected alien felons. The issue of "illegal alien felons" and their relationship to crime in this country is the driving force behind today's discussion. The sponsor of these proposals, Senator Lawton Chiles (D-FL), has expressed the view that "the fact that a good number of persons committing crimes in the United States are illegal aliens is complicating and frustrating an already overburdened legal and penal system". See, 133 Cong. Rec. S4999 (daily ed. April 9, 1987) (statement of Sen. Chiles).

Senator Chiles' Proposals

Out of an obvious concern for this issue, Senator Chiles has introduced several bills which are intended to strengthen our nation's immigration laws against the problems posed by "illegal alien felons."

The first bill, S.972, would require mandatory detention of aliens convicted of aggravated felonies in the United States. Aggravated felonies would be defined as murder, rape, kidnaping or attempts at such, and any trafficking of illegal drugs. Mandatory detention would deny voluntary departure and conditional parole in the immigration process to persons convicted of these crimes. To the extent that an alien is held in custody by state or local authorities, the bill would also require the Attorney General to take custody of these persons, and for immigration officials to give priority to cases involving felons in the overall immigration system.

The second proposal, S.973, would impose stricter criminal penalties upon aliens who reenter the United States after having been deported. This provision is intended to strengthen immigration law by creating a greater deterrent to alien drug traffickers who are considering illegal entry into the country.

The third bill, S.974, would make it a criminal offense for refusal to appear at immigration proceedings including deportation and exclusion hearings with penalties up to five years in prison, fines up to $5,000 or both. Its purpose is to encourage the appearance of the alien at any future immigration proceeding; but should the alien choose to abscond, he would be subject to criminal prosecution.

The fourth proposal, S.975, would impose criminal penalties against those who knowingly aid or conspire to assist alien felons in obtaining entry into the United States. The stated purpose of the bill is directed to those persons in this country who allegedly recruit aliens for the purpose of dealing drugs in the United States.

The final bill, S.976, is intended to give statutory authority to a process which is being developed between the INS and other federal law enforcement agencies. This bill would require linkage of INS computers and the National Crime Information Center and other computerized criminal indexes. It is argued that the bill is needed to permit an efficient, two-way channel of information between the INS and law enforcement agencies to enhance efforts to apprehend and prosecute aliens who commit immigration violations, as well as other criminal offenses.

Misperceived Problem

Senator Chiles' proposals are offered as a modest step at correcting perceived flaws in the existing system of immigration law enforcement. Most Americans support effective enforcement of the nation's immigration laws; and since many of these same Americans are also deeply concerned about crime, the bills under consideration today may have initial appeal. However, the bills misperceive the problem. There is only limited evidence to suggest that the magnitude of the criminal alien problem is as significant as the proposed legislation would suggest.

Obviously, perceptions may vary. For example, a November 1987 report from the General Accounting Office which examined the INS' enforcement activities against criminal aliens found that although no reliable data exist on how many criminal aliens there are, law enforcement officials and INS representatives in the five cities [studied] believe that alien involvement in crime is a serious problem" [emphasis added]. See, GAO Report, Criminal Aliens: INS' Enforcement Activities, November 1987.

The GAO also found generally that crime statistics identify individuals as foreign-born rather than as aliens. Accordingly, the GAO report examined the problem by using FBI arrest statistics related to foreign-born individuals (which includes aliens and naturalized citizens) reported by law enforcement agencies as an indicator of the problem. As a result, in cities which have experienced immigration-related demographic change, the percentage of criminal aliens may seem higher in comparison to localities which have not experienced such demographic change.

For example, FBI statistics indicate that in fiscal year 1985, in Harris County (Houston) and Los Angeles County, more than 20 percent of the arrests in which the offender's place of birth was known involved foreign-born individuals. In Dade

County (Miami) the comparable figure was 38 percent. However, each of these localities has recently experienced a relatively high volume of immigration and each has changed dramatically within the last several years which may render percentage assessments of this kind somewhat meaningless.

Upon introduction of the legislation last year, Senator Chiles noted that "...[in 1986] over 100,000 illegal aliens were arrested for criminal offenses. Yet, only 12,000 were deported. I think those two figures -- 100,000 versus 12,000 -- clearly describes the immense problems such felons have presented to our law enforcement system... Our criminal systems must respect the rights of all individuals but also must acknowledge the threat illegal alien felons are to our communities."

Admittedly, crime in America is a serious problem, one that tears at the fabric of society. The increasing prevalence of illicit drugs in the United States and the vast underground economy spawned by this illegal activity has added a profoundly disturbing element to the crime problems confronting our nation.

Like other concerned Americans, the members of the ACLU also want effective solutions to the problem of increasing crime in our society. We seek a common goal toward a just society -- that our streets are safe, our homes secure, our families unthreatened and unafraid. The debate has rarely been over what to do, but rather how to do it. We realize that effective solutions do not come easily; they are illusive and difficult to craft.

However, as a general matter, the bills under consideration today raise troubling concerns for civil liberties. At best, the bills are unnecessary; at worst, they may be counterproductive in terms of our immigration policy objectives.

In a March 1987 report, GAO recommended to the Commissioner of the INS that he should ensure INS systems contain the data needed to help the INS identify deported aliens at ports-of-entry. In August 1987, the INS said it had implemented the suggestions contained in the March GAO report. The GAO offered no further recommendations in this area in its November 1987 report to this Subcommittee.

Drugs and Immigration Policy

At the outset, it is important that we frame the debate on these proposals in an appropriate context. Thus far, the need for this legislation has been discussed in the context of enhanced criminal law enforcement. In reality, these proposals are modifications of existing immigration law with far reaching implications for present immigration policy.

More importantly, however, the proposals seem redundant given recent changes in the law. For example, under the provisions of the Anti-Drug Abuse Act of 1986 and the Immigration Reform and Control Act of 1986, the INS is already placing primary emphasis on the expeditious removal of aliens convicted of serious crimes.

In fact, modifications made in the law as recently as 1986, as well as longstanding immigration policy objectives, would now be altered by the thrust of proposals under consideration today. For example, Section 242 (h) of the Immigration and Nationality Act provides, in part, that "an alien sentenced to imprisonment shall not be deported until such imprisonment has been terminated by the release of the alien from confinement." In addition, Section 242 (c) of the INA requires that upon arrest and detention of an alien by the INS, custody conditions (i.e. bond) must be set.

Section 241 of the INA sets forth the statutory provisions under which an alien may be deported from the United States. Current law already provides several grounds of deportability arising specifically from criminal acts committed in this country. Included are crimes involving moral turpitude, prostitution, alien smuggling, and narcotics offenses. The Anti-Drug Act of 1986 extended coverage for deportability to so-called "designer drugs" as well.

An examination of Senator Chiles' bills reveals other seemingly contradictory policy objectives between criminal and immigration law enforcement.

S.972

Present Law

8 USC 1252(a) - allows the Attorney General to release aliens who are in custody upon posting of a bond. The provision also allows the Attorney General to conditionally parole an alien held in custody. Senator Chiles' proposal would prohibit conditional bail or parole of an alien in custody, awaiting a determination whether he is deportable for having been convicted of an "aggravated felony" -- murder, kidnapping, rape or any attempt thereof, or any illicit trafficking in a controlled substance (as defined in Sec. 102 of the Controlled Substances

Act).

In evaluating this proposal, one threshold question might well be whether the change in law is actually needed. If the question is whether the Attorney General has presently the authority to detain an alien suspected of an "aggravated felony" pending a determination of deportability, the answer is unquestionably yes.

The present Immigration Act endows the Attorney General with wide discretion in controlling the alien's custody. During pendency of the deportation proceeding, the purpose of this control is to assure the alien's availability and to prevent his causing harm to others.

S.972 would add only marginally to the authority of the Attorney General to detain an alien pending determination of deportability. However, the prohibition on the release of the class of aliens specified in the bill would limit substantially the Attorney General's discretion to release an individual on bond in appropriate circumstances. While Congress may increase the penalties imposed on aliens for the commission of certain crimes, the decision to limit the Attorney General's discretion in this matter should not be undertaken lightly. The restrictions proposed would add little to the authority already available and could have significant impact in restricting limited space available for alien detention. Given recent events involving detained Mariel Cubans and the obvious shortage of INS detention space, such a decision should not be made without a complete assessment of the impact of that decision on the detention question.

S.973

Present Law

8 U.S.C. 1326. An alien who has been arrested and deported, or excluded and deported, and who is subsequently apprehended attempting to enter the United States illegally, shall be guilty of a felony punishable by imprisonment of up to two years, a fine of $1,000, or both. Senator Chiles' proposal would increase penalties against aliens deported after conviction of the commission of an aggravated felony could be imprisoned for a maximum of 15 years and fined up to $20,000. Aliens who were deported after a felony conviction could receive prison terms of 5 years and be fined up to $10,000.

While Senator Chiles' proposal raises no new civil liberties concerns, the question presented is whether stiffer fines or greater prison terms will itself solve the problem presented by the failure to deport "illegal alien felons." The answer may well be that such a proposal will have only a marginal impact on the problem since the real difficulty seems to be found in the INS' inability to adequately identify and apprehend persons subject to deportation.

S.974

Similar arguments could be raised in consideration of S.974 which would impose criminal penalties for the failure to appear at an INS proceeding. The penalties would apply to the putatively deportable or excludable alien, and also to witnesses in such a proceeding. Obviously, the provision is intended to encourage individuals to appear at future immigration proceedings. And, it should be noted, of course, that criminal penalties would apply only if the alien were notified by the INS and capable of appearing. However, the real question presented is whether the increased penalty is needed to achieve the underlying purpose of the bill. Virtually no information has been presented to suggest that aliens, if properly notified, fail to appear at immigration proceedings merely because penalties faced are considered inconsequential. It would appear that for those aliens with an intent to abscond because they have committed a serious crime, even an increase in penalty would not necessarily encourage their future participation in further immigration proceedings. In that sense, there is little to suggest that the change in law would be an effective solution to the problem.

S.975

Present Law

8 U.S.C. 1327. Prohibits any person from knowingly aiding an alien excludable under 8 U.S.C. 1182 (a)(27)(28) or (29) to enter the United States. These provisions generally apply to aliens excludable for national security reasons. Conviction of aiding an alien in this category could impose punishment of up to 5 years in prison or a fine of $5,000, or both. Senator Chiles' proposal would add to the category of excludable aliens covered under these provisions, aliens convicted of crimes involving moral turpitude, or who have been convicted of two or more offenses, or who have been convicted of possession or trafficking

in narcotics or marijuana. Thus, helping these aliens would now become a felony under Senator Chiles' proposal.

S.975 is particularly troubling since it would seem to impose a standard of strict liability for any assistance provided to an alien seeking to enter the United States, if the alien were subsequently found to have a criminal record and otherwise covered by categories set forth under the bill. Of course, it seems unlikely that an individual would know of an alien's conviction record for activities here in the United States and, therefore, would penalize such action even where a lack of actual knowledge were present.

Moreover, S.975 raises questions with regard to domestic and international legal obligations to assist refugees fleeing persecution.

S.976: The NCIC Problem and INS Authority

S. 976 would amend the Immigration and Nationality Act to establish a connection between the FBI's National Crime Information Center (NCIC)--the FBI's central, computerized repository of criminal history record information, containing nearly 20 million records--and the INS' computerized indexes containing information on deportable aliens. The bill proposes two changes to the Immigration and Nationality Act. First, the bill would give the INS on-line access to the NCIC and to "other information compiled in appropriate computerized indexes maintained by law enforcement agencies." Second, it would authorize the INS to enter information on aliens into these databases.

Since the INS already has access to this system, the first proposal is unnecessary. The second proposal, to enter information on all deportable aliens into the NCIC database would go beyond the present scope of the NCIC, would pose serious civil liberties concerns, and would set a precedent for an agency charged with a combination of law enforcement, civil and administrative responsibilities to enter information into the NCIC database.

It would be inconsistent with the function of the NCIC to store in the system information related to administrative or civil INS warrants of deportation. There are many reasons aliens can be deported other than for conviction of a crime. For instance, an alien may be deported for entering the United States without inspection, or if they stay in the country beyond the permitted time. These may be deportable offenses by INS standards but they are far different from the traditional criminal history record currently stored in the NCIC. Under current law, only information on serious and/or significant offenses may be stored in the NCIC system; nonserious offenses and those committed by juveniles are excluded.

Again, such a deportation file within the NCIC would not be limited to people who are deportable for criminal law enforcement purposes. Entry of noncriminal warrants into the NCIC would dramatically alter the NCIC's role.

INS Databases

INS currently maintains four major databases for a variety of purposes, including providing information on aliens who may be ineligible to enter the United States (NALIS), providing enforcement and intelligence information on those known or suspected to be in violation of immigration laws (OASIS) and the main system (CIS) which contains information on persons other than those temporarily residing in the country.

The INS databases are known to have very serious data quality problems, many of which have been documented in recent GAO reports. As one GAO report on "Criminal Aliens" concluded:

> The two INS systems used to detect previously deported criminal aliens... do not contain all of the needed identification and/or deportation information. As a result, INS's ability to exclude these aliens if they attempt to reenter the country at a port-of-entry is severely limited. The report finds that internal documentation and oversight problems within the INS are the cause of the poor record quality. Even the INS believes that the information in its databases "is not generally in a format that would be appropriate for general queries by criminal justice agencies." (Letter from R.M. Kisor, INS Associate Commissioner to D.F. Nemecek, FBI NCIC Chief, 8/87)

The proposed bill would, in effect, permit the transfer of poorly kept INS records into the NCIC system.

The establishment of a file within the NCIC on "deportable" aliens raises strong civil liberties concerns about the creation of an FBI tracking and surveillance system. The use of the NCIC for tracking purposes is a matter of great debate in the law enforcement and civil liberties community. A panel comprised of technical, law enforcement and civil liberties experts advising the House Subcommittee on Civil and Constitutional Rights sharply criticized the NCIC tracking proposals, calling for strict statutory controls. It should be noted that the FBI's own Advisory Policy Board recently rejected a more limited proposal due to their concerns about data quality. The addition of the INS file would set a dangerous precedent of expanding the NCIC's current function of exchanging criminal history records to include a tracking system on people who may or may not be suspected of a crime.

For the above reasons, the ACLU urges this subcommittee to reject S. 976 on the grounds that the legislation is unnecessary, would dramatically alter the function of the NCIC and raises fundamental civil liberties concerns about data quality, privacy and due process.

INS Drug Enforcement Efforts

There is an important collateral issue which is raised by Senator Chiles' proposals and which we would hope could be considered by the subcommittee. It involves the increasingly active role played by the INS in our nation's drug enforcement effort.

While Senator Chiles' proposals would increase penalties for certain aliens apprehended by INS, it should be noted that there is already some doubt as to the statutory authority of the INS' drug and other enforcement activity that INS Commissioner Alan Nelson summarized in his March 18 press statement. In that statement, the Commissioner said that INS is "in the forefront in the battle to keep drugs from surreptitiously entering the United States."

However, Assistant Attorney General John Bolton noted in a letter to Vice President Bush of October 9, 1987 regarding the need for a statutory clarification of INS activities, noted:

> ...the Immigration and Nationality Act is not specific in the delegation of authority to INS officers to enforce the multitude of violations which they encounter in the course of their primary jurisdictional duties. Many of the activities currently being conducted by INS officers in the performance of their duties are performed through implied authority and legal interpretation. INS officers presently have no statutory authority in drug enforcement....

(See Appendix A.)

The Immigration and Nationality Act is specific in the delegation of authority to INS officers to enforce only immigration laws. One reason for the limited delegation of authority to enforce other criminal laws appears to be the broad police authority of INS officers under the INA, operating under a relaxed standard of the Fourth Amendment and with wide deference from federal courts, pursuant to Section 287 of the INA. When coupled with a general arrest authority and responsibility for enforcement of other federal criminal laws, INS agents would have almost unprecedented arrest authority denied to other law enforcement agencies like the FBI, and state and local law enforcement officers.

The point here is that the INS has an important responsibility for the enforcement of the nation's immigration laws. The agency was never intended to become a front-line soldier in the war on drugs. To the extent that the INS may play a role in the enforcement of other criminal laws, this function should not overshadow the agency's principal mission. In that regard, proposals for change in the present immigration law should be evaluated first on the merit of its impact on immigration policy.

Conclusion

The public has a right to expect that the government will work to reduce the crime rate, not simply give lip service to that goal. Effective crime control and individual rights are not necessarily inconsistent. We can have both. The American people have a right to expect both.

The bills under consideration today, however, are not likely to advance individual rights nor are they likely to effectively address the problems posed by criminal elements in our communities.

U.S. Department of Justice

Office of Legislative Affairs

APPENDIX "A"

Office of the Assistant Attorney General

Washington, D.C. 20530

October 9, 1987

Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Enclosed for your consideration and appropriate reference is a legislative proposal to amend the Immigration and Nationality Act by inclusion of a new Section 294. This proposed section would confer general arrest authority upon officers of the Immigration and Naturalization Service (INS). For your information, this proposal is also included in the Department's 1988 Authorization Bill as an amendment to the current Section 287 of said Act. It is our considered opinion that the proposal should also be introduced as a separate piece of legislation at this time.

The Department of Justice considers this legislation essential to the changing nature of immigration law enforcement, with new emphases on criminal aliens and narcotics traffickers. Enactment of the Immigration Reform and Control Act of 1986 (IRCA) and the immigration-related provisions of the Anti-Drug Abuse Act of 1986 (Sections 1751 and 2011) confirm the necessity of this legislation to successfully meet the challenge of the additional duties within the INS mission. I must emphasize that this legislative provision is not an expansion of INS authorities, but rather a statutory clarification of activities already performed by immigration law enforcement officers in the course of their primary jurisdictional duties. Our concern is to provide these officers unambiguous legal authority in executing those duties that they are currently charged with, such as narcotics interdiction arising incidental to border control and alien status checks.

In short, the bill would provide general law enforcement authorities to immigration officers in order to enforce criminal violations of federal law encountered during the course of their duties, subject to the supervision of the Attorney General.

The increasing violence along the United States - Mexican border, the continuing use of aliens in international narcotics trafficking, and the increasing efforts to curb organized crime, particularly emerging ethnic crime groups, have inevitably involved INS officers. However, while officers of other federal agencies (such as the FBI, Secret Service, and U. S. Marshals Service) have explicit authorities commensurate with their enforcement duties, INS enforcement officers often do not.

INS presently has officer representatives to:

- The Organized Crime Strike Forces which operate in numerous judicial districts throughout the United States.
- The National Narcotics Border Interdiction System (NNBIS) which operates in various regions throughout the United States.
- Operation Alliance, a unified, multi-faceted enforcement effort on the Southwest border to interdict drugs, weapons and alien smuggling.
- A variety of federal, state and local cooperative task forces which focus on a multiplicity of crimes of fraud, violence, smuggling and other serious matters.

INS regularly assists the U. S. Marshals Service in "Operation Fist"; has contributed officers to the Skymarshal program; and maintains memorandums of understanding with several federal agencies regarding INS prosecution of offenses coming under their primary jurisdiction, when aliens are involved. For example, during 1985, INS officers confiscated a wide range of dangerous weapons, including automatic rifles, machine guns, silencer-equipped pistols, sawed-off shotguns, incendiary devices, large caliber handguns, and "Saturday-night specials". They seized thousands of pounds of marijuana, and hundreds of pounds of cocaine and heroin, among other dangerous drugs.

With the advent of INS participation in Operation Alliance in August 1986 and the Organized Crime Drug Enforcement Task Force (OCDETF) in December 1986, the 1985 seizures pale in comparison to their current efforts in the Administration's war on drugs. While it is true that through participation in Alliance and OCDETF, INS officers may be cross-designated for Title 21 arrest and/or investigative authority for a limited duration, the fact remains that this most important aspect of their enforcement mission is performed without explicit statutory law enforcement authority. This legal limitation jeopardizes these invaluable contributions to federal law enforcement and exposes INS officers to adverse judicial views and findings.

The lack of legal clarity has also hindered enforcement of the immigration laws. Efforts to seize assets and monies of organized smuggling rings have been stymied by the lack of a statute providing general investigative jurisdiction to INS officers, which would permit investigation, prosecution and seizure under the racketeering, money laundering and financial disclosure statutes. Absent these valuable enforcement tools, INS efforts to penetrate and contravene such violent and profitable organizations will only be of limited success.

Simply stated, the Immigration and Nationality Act is not specific in the delegation of authority to INS officers to enforce the multitude of violations which they encounter in the course of their primary jurisdictional duties. Many of the activities currently being conducted by INS officers in the performance of their duties are performed through implied authority and legal interpretation. INS officers presently have no statutory authority in drug enforcement, yet they seize more narcotics than any other single agency along the southern land border between ports of entry. They are forced to do so as private citizens or under "peace officer" status when conferred by the various state or local jurisdictions. The desired bill would statutorily authorize these activities.

The attached proposal contains the Department's suggested statutory language. It is similar in construction to the language used in statutory authorities of other law enforcement agencies such as that of the United States Customs Service. The last subsection of the suggested provision states, "the authority conferred by subsections (1) through (4) of this section does not affect the investigative jurisdiction of any other federal law enforcement agency." This subsection ensures that the bill would not be misinterpreted as usurping or otherwise jeopardizing activities presently under the jurisdiction of other agencies, such as the Federal Bureau of Investigation.

We urge prompt and favorable consideration of the enclosed legislative proposal by the Congress. The Office of Management and Budget has advised this Department that there is no objection to the submission of this legislative proposal from the standpoint of the Administration's program.

Sincerely,

John R. Bolton

John R. Bolton
Assistant Attorney General

Enclosure

Senator KENNEDY. Thank you very much, Mr. Henderson. We appreciate your testimony and we will take the time to find out about whether both the INS and the Justice Department are pursuing those particular issues. We are very glad to have your comments and we thank you for your testimony. I have no questions.

Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

I appreciate always visiting with Mr. Henderson. He and I have had some spirited discussions in years past and I certainly admire his perseverance and his extraordinary dedication to his causes.

But when we get to this ancient question of what is likely to advance individual rights in this country, and that is a phrase you use, we have this problem of our youth and their dependency, and a demand problem that we ought to correct, but that is tough.

People being murdered in the United States in the drug traffic, the spread of AIDS through the use of dirty needles to inject illegal drugs—those certainly are not likely to enhance or advance individual rights in this country.

As I ask you often as you do your fine work, you oppose these proposals to deal realistically and effectively with the alien felon, but what are your alternatives? What would you propose we do to reduce criminal activity of alien felons? That is really the issue, nothing more.

Mr. HENDERSON. That is a fair question, absolutely a fair question, Senator. Like you, I share, and I think the ACLU shares a deep concern about the problems of crime in our society. We recognize that there are no easy solutions to the problem. We are committed to searching for solutions and we would like, obviously, to work with Congress, and we do, in trying to craft solutions.

From my personal view of the legislation and of the problem, we too would like to get a handle on trying to address the problem, but we believe that current law now provides adequately for a way of addressing the problem of criminal aliens.

For example, if you look at the power the Attorney General now has to address the problem of apprehension and detention of aliens who have been convicted of serious crimes, the statute now provides ample authority.

If you wonder whether the Attorney General could do what the bills would encourage him to do in terms of focusing his resources on this issue, the answer is unquestionably yes. Now, while, in fact, Congress has the authority to increase the level of penalties, to impose stiffer fines, to lengthen the amount of time for detention, all of those things could be done.

While they do not necessarily raise new civil liberties interests, they do not seem to advance the underlying purpose of the bill if current law now provides an ample place for that to be done.

The only issue that we would cite is not that we are opposed to the underlying thrust of the legislation, but rather the bills themselves are unnecessary and at least in two specific instances raise serious concerns about civil liberties.

I cited the issue of alien detention and I see that as a very serious problem. We would be happy to elaborate on that issue in terms of amplifying why I believe it does not advance individual liberties to impose mandatory sentencing, but I know that time is short.

Senator SIMPSON. Well, I thank you, and you can remember that this chairman has worked long and hard on a criminal code and I joined in that effort after I came to this place.

But I remember the cries that have gone up in years past. I remember particularly the one about confiscation of property and what a terrible thing that would be. Yet that is probably the best thing we ever did, where we gathered up the aircraft, the yachts, the houses, the whole works. I remember very distinctly how we were told that that was the slippery slope, you know, and all that business.

You know we have a problem. We need not just criticism; we need positive alternatives, and I will look forward to working with you on those.

Mr. HENDERSON. Thank you, Senator.

Senator KENNEDY. Thank you, Mr. Henderson.

Commissioner, we will recess briefly and vote and we will come back and hear your testimony.

[Recess.]

Senator KENNEDY. We will come to order and we will put this testimony and the previous testimony at an appropriate place in the record.

If we could come back just to that red line and the reasons why you think that is going up now and what you anticipate for the rest of the year.

Mr. NELSON. Mr. Chairman, of course, it is always difficult in this area to have any clear knowledge. There are several considerations, we believe, that are probably applicable.

One, of course, is the SAW program still being open, and so people are coming in. There has been, of course, a draw for agricultural workers. That continues to be the case. So once that program is ended, we think we have taken care of that issue, or will.

Of course, the ongoing factors that are always there are the push factors, economic conditions and social conditions in Mexico and elsewhere, and those continue, of course, to be a problem. So those pressures exist, so that is our best estimate.

We cannot tell at this point whether that red line is the beginning of a trend up or whether it will continue to follow the blue line. It is just too early to tell. We will be watching it very closely.

But, again, the fact that both the blue and red lines are significantly below the high 1986 level, we think is an indication that this new law is, in fact, beginning to work and can work in the future.

Senator KENNEDY. Okay.

Mr. NELSON. I might just move on to the drug area because I think this is significant. Obviously, people coming across the border illegally and contraband coming across illegally—there is often a tie-in.

Our people, particularly the Border Patrol, are there. They are by far the most effective of any of the agencies in drug enforcement on the land border, and that is probably a generally unknown fact.

This chart just indicates the increase. These are Border Patrol narcotics seizures in the last number of years, and as you can see, the value from 1986 to 1987 tripled. The cocaine seizures, which will be the next chart, show an even more dramatic increase in number of seizures.

We are very proud of that effort. That ties in with our ongoing effort. Our people are on the border; they speak Spanish, they know how to track. It is working well and we are pleased with all aspects of it.

We have started also, as you know, Mr. Chairman, to use drug-sniffing dogs—they have gotten a lot of play lately—we think very effectively. One of the things we are proud of, also, is our education efforts. Uniformed Border Patrol people on their own time are going into schools and talking to children, letting them know the danger of drugs. The fact that uniformed enforcement people do that, we think is very significant and we want to see that expanded to others, also. We have briefed already about 70,000 school children in Texas, and they were up here recently in Washington tied in with the White House drug conference.

We also are very involved, as was mentioned in Senator Chiles' testimony, with the Organized Crime Drug Enforcement Task Forces. We have 13 people assigned to each of the units and another 90 throughout the country.

I think it is being recognized that immigration has a very big part, along with the other agencies, in that and we are very pleased about it. I might just say, and I think honestly, not just with false pride, that INS is probably the best bargain in the drug enforcement business.

To the extent that there is increased drug funding under the DeConcini bill or anything else, that ought to be kept in mind, because we have no drug funding. We do it as part of our ordinary immigration enforcement. But if you look at cost/benefit and return on investment, I think there is no question about our effectiveness.

Let me turn, if I might, to the employer sanctions or the larger area of job market. The goal of employer sanctions, of course, is to cut back on illegal aliens coming in and working in this country.

The counter-goal of that, the flip side, is that we want U.S. employers to hire legal workers, U.S. citizens and legal aliens, not hire illegals—a very solid goal. It is good for the United States, obviously, for very many reasons not to have illegal aliens working here. It is also good for business, a lot of opportunity for jobs for our people, and that is the way it ought to be.

The implementation, we think, has been very effective—the regulation development, the form development, the handbooks to seven million employers, a high level of knowledge by American employers of the program, and understanding, and a high level of acceptance.

We have a number of approaches we think are effective and balanced. One is what we did on our own, employer information visits. We have already accomplished over 700,000; we will go to a million of those. That is the first step before we would even issue a citation, as required under the law, and we have now issued 1,600 citations.

Then the third step is appropriate fines, and we have already issued nearly 80 of those. And it is interesting; most of the early fines have, in fact, been paid or settled, and I think that is an indication that we have done it right.

We started a month or two ago a random audit procedure so that any employer has an equal and fair chance of being selected for an audit visit, and that is working well. We have done it so far in eleven areas of the country. We would expect that we will put it nationwide in the next few months.

We created an employer and labor relations office, probably one of the few Federal agencies or government agencies that has done that, to work with employers in a positive sense, and that is working well; the LAW program, the lawfully or legally authorized workers, where we can work with employers, State employment services, welfare departments, and others to be sure that legal workers come into these jobs.

There is a tremendous nexus, and I know you have a lot of interest in welfare reform, between welfare reform and immigration reform. There are a lot of jobs formerly held by illegal aliens that now can go to U.S. citizens and legal aliens, many of whom were on benefits. So that is a tremendous thing and I think we can do more on that, so we think it is good.

Now, in terms of external evaluation, I think that confirms what I am saying. There have been very, very few complaints from employers or others about how this act is working.

One of the allegations was that it would be a tremendous burden on employers. We have had little complaint of that. The other concern, and I know one of your particular interests, is discrimination. There is very little indication of that; a few cases have been filed, but we have a system to deal with it when and if it comes up.

The GAO has issued, we think, a favorable report saying progress so far is satisfactory. Of course, we are beginning the program. Page 26 of our testimony has a good quote from the GAO report.

The U.S. Chamber of Commerce, obviously not initially a fan of employer sanctions, in its own survey found a very high level of knowledge and a very high level of acceptance of the program, and we think that is indicative.

Turning to the third—we have border enforcement, job market enforcement. Entitlement enforcement, Senator Exon's bill, and the SAVE program—SAVE is an excellent program. It is good government, it is good welfare reform, and good immigration reform.

You know, it cuts down on fraud. It gives benefits to those entitled; it is solid. It is working well. We now have a telephone verification system which we would like to demonstrate to the Committee at some point where by touch-tone telephone you can access the computer records to get the information on whether an alien is here legally and therefore entitled to benefits, and if they are otherwise entitled or have to pursue secondary verification, which will deter people who are here illegally from applying.

As indicated, we have 22 States now involved in this program. We are going to go well over half the States, we expect, in the next month or two. We would hope, frankly, that the Governor of Massachusetts, who we know is interested in higher office, might well want to pursue the SAVE program in your State, Mr. Chairman.

As Senator Simpson indicated, Wyoming is one of the States. We hope Senator Exon also could get Nebraska. It is working well. By October of this year, we will be in full implementation.

There is a provision in the law for waivers. We think waivers are very unlikely and, of course, unnecessary because there is no other way to check the status of aliens except through INS, and it is working.

We already, from last year's records, have kept about 47,000 ineligible aliens off the benefit rolls—they are not entitled to those benefits—and saved tens of millions of dollars, and there is a lot more out there.

Again, I would emphasize the interrelationship of welfare and immigration reform. I might say we would support the concept of Senator Exon's bill. We think there are some changes to tighten it up and make it a little more effective, to define some of the procedures better.

But the concept of his bill is good and we would endorse that to the committee and would like to work with the committee and Senator Exon to make that more effective. It does complement the SAVE program to be sure that illegal aliens do not get benefits because there is no reason for them to.

Let me now turn to the other aspect of enforcement, the criminal aliens, and this addresses Senator Chiles' testimony. Part of IRCA, of course, was to do more about criminal aliens, and it makes sense.

A person who is here illegally and commits a very serious crime, ought to serve his sentence and then be deported. I do not know of any philosophy that would say those people ought to stay.

Now, one thing under IRCA we are doing, which gives us some direction and some ability there and some better information exchange between State, local, and Federal Government so we know where these illegal aliens are—we have started an institution hearing program.

So while somebody is in a State or Federal penal institution, they are having their exclusion hearing there so we have a final decision if they are going to be deported before they get out and then they can leave immediately, and that is good.

We have shown under our investigations program in this last year a 50-percent increase in criminal alien cases we have handled. As new resources come on board, the investigators particularly will handle more, so that is working well.

I might say that we do, in concept, Mr. Chairman, support the Chiles bills. We think they are good. Now, like everything, some fine-tuning changes need to be made, some definitional changes, but the concepts, we think, again, are reasonable and supplement what is already in the immigration bill.

Senator Kennedy. Let me ask you, do you think you need more authority in terms of deporting illegals that commit felonies?

Mr. Nelson. We could certainly use more. I think some of the points Senator Chiles makes are well taken. We do have the problem of jumping bond. I agree with your points. It is not just Federal; it is mixed, Federal-State.

Senator Kennedy. I am not talking about people jumping bond. I am talking about people that are incarcerated and are here illegally and commit serious crimes. I mean, do you have trouble in terms of deporting them from a legal point of view?

Mr. NELSON. Not a great deal of trouble, but we certainly could use some tightened enforcement as set out in those bills. I might just go on from that. I think one thing that needs to be clear——

Senator KENNEDY. Maybe you could just ask your general counsel to give us a note on that.

Mr. NELSON. Yes, I would be happy to do that.

One point is I do not think there is a difference, but we want to be clear that we are talking about people having completed their sentences. We do not want to talk about deportation in lieu of criminal sentences. I do not think Senator Chiles is proposing that, but that is important.

We do have a resource concern. Of course, like the Bureau of Prisons, there are some problems with space and that needs to be addressed in conjunction with the substantive provisions there.

Turning now, Mr. Chairman, to legalization, I would like to go through that briefly. This chart in front of you here shows the flow of the number of applicants. You can see back in August 1987 the high peak. It is interesting that that was at the time when we had a September 1 deadline, at which time everybody had to have documents. Before that, merely filing for legalization would qualify.

So that clearly drove a lot of people to come forward, a deadline we say is significant.

As you see, at the right-hand of the chart, the numbers as we projected starting roughly the first of the year have climbed dramatically. I think you will see that chart in the next few weeks until the end of the program continuing a very steep upward climb.

So we are seeing the surge that we predicted. We will see many hundreds of thousands additional coming through. I think in terms of operation of legalization, even our critics generally have been very complimentary, and we appreciate it and we agree with them.

We opened 107 offices on time, hired 2,000 new employees, did all the logistics necessary, forms, procedures. The system has run well. We have been flexible in regulations and guidelines. Sometimes we get beaten over the head for being flexible. I wonder if our critics would like us to be rigid.

The program has been self-financed, as the Congress mandated. It has been a success; I do not think there is any question about it—1.6 million to date, and that is going up. Clearly, when you add together, as you must, all of the different programs—legalization, SAW, Cuban-Haitian adjustment, and the registry provisions—we will go well over two million by the time all of those programs end.

And when you add the derivative benefits of spouses, relatives, and others, you will be adding other millions. So you will be talking about 3 million or more. We are already three to four times the total of all other nations' legalization programs.

We hear from our own public surveys about a 95-percent awareness out in the affected communities of legalization. I do not think you can do any better than that. We think there has been a very balanced and effective public relations campaign not only by us, but by the QDE's, interest groups, and others. And the press generally, I think, has done a lot. So the word is out there.

We have had a fair amount of time. When you add a 1-year period, plus a 6-month get-ready period, and now our own additional 60 or more days to get the paperwork in, you are talking about 20 or more months, almost 2 years, which is a very, very significant time. We have had good involvement by the QDE's. It has varied, but we certainly have had support, and I think that, together, has made it work.

As I say, from this chart we expect a surge here. We are seeing it now; we will continue to see it. We have, as you know, added this new simplified filing policy since April 4, so that a person can merely file the application and pay the fee.

It takes them half an hour or less to fill out the application. They have another 60 days or more, depending on when they are scheduled for an interview, to get their documents in and to get their medical. So there is no reason that anyone cannot or should not file by the May 4 deadline.

We have also gone into what we call a recruiting mode where we will pay the QDE's and State governments for them merely to get the applications to the people, and when they are filed they get the credit.

We are getting some good support by some, not so good from others, but an effort, again, if there are people out there—and we do not know that that is true or not because no one knows, but the opportunity is going on and has been for some time and will continue over the next 2 weeks to get everybody eligible to come forward.

We have also, of course, had extended hours. Our famous Thursday Night Live is now pretty much nationwide. Saturdays—we will go on to Sundays; we will be open until midnight or beyond on the 4th. And, of course, anybody coming forward to us on the 4th, even if the crunch is such that we cannot handle them all, will all be given, of course, a ticket to come back so they will be covered.

There have been a lot of myths about legalization, and I think all of you have heard them, of course. One, fear of INS; when you have had 80 percent of the people come directly to us, I think that refutes that. The numbers, the ones we talked about, refute that.

The fees—we had a lot of discussion. It is interesting that none of the aliens are complaining about the fees, and I guess, again, with the numbers, I think that refutes that. Family fairness—I know you, Mr. Chairman, of course, have had some concerns there, but I think when you look at that, how we implemented that aspect, following the law, it has been fair.

Interestingly, over a third of the applications have been families, so the idea that families are being separated is clearly a myth. We have set up a procedure for people to file special petitions. It is interesting; we have had 30 nationwide during this time. So the advocates who made so much noise have not even followed up on that.

With the confidentiality provisions, I think there is no question that people are covered and that they have the right to petition for these other relatives who might not be eligible, and the system will work for the legalized aliens the same as it works all the time for legal aliens.

Fear of deportation—I do not know of one case, and our adversaries I do not think have cited any, and they certainly would if there were, where we have improperly grabbed somebody or deported them. It has not happened. We have lived up to the letter and the spirit of the law. The confidentiality provisions that you have put in have been adhered to very effectively. So the program has worked; it has worked well, in balance with all the others.

If I might conclude on the extension issue because obviously this is an important one, and I will try to quickly summarize the points why, number one, it is bad law, an extension; it is bad policy, bad precedent, and it is bad for the program.

Clearly, there is a confusion factor. All the talk and pushing for extension might well keep people from coming forward. I think that is one unfortunate thing. The other is the procrastination factor. We all know what tomorrow is.

If the IRS extended 6 months the tax-filing deadline, would they get more tax returns? Probably not. They would just get them all 6 months later. I think that is what we are likely to see in legalization.

Let us go on to others. The encouragement of illegal immigration. The thrust of the bill, of course, was to keep down illegal immigration. If it is extended and there is the possibility of future extensions, you get into the concept that we are not serious about stopping that; let aliens get in before there are other changes made.

Remember, Congress made it very clear that this was a one-time-only program. Other countries have had a series of legalizations and they have generally not gone well, and they have all said we should not have done it, and I think we had better stick to our guns. This is one time only. An extension erodes that.

Fairness, the whole concept we have talked about all along, the balance between the illegal alien that is being legalized and the legal one; we distort that if we continue to talk about extension.

BALANCE

IRCA was a delicate balance. If we start to unravel that, I think there is a real concern that we can go on to other areas. If you are going to change one part, then you have got to be considering changing the other parts.

Sunset on sanctions and waiver on SAVE ought to be addressed by the Congress, and maybe those ought to be modified if there is any serious mood to go for an extension.

PRECEDENT

It is clear that the groups that have pushed the extension have come to you and come to everybody wanting much more; expand the program, change the dates, and so forth. They have been told generally that that is not going to happen, but if they get this, they will be coming back for more.

We already have a bill introduced by Senator Cranston to expand or extend the SAW program. Now, if we extend regular legalization up to the SAW dates, then the SAW people will say, gee, we ought to get the same, and I think you have got to see that. It is the typical camel's nose under the tent; the rest of the camel is not far behind and we will have these other precedent-setting things if an extension is granted.

Clearly, there is a danger, Mr. Chairman, of being divisive. With the seven-vote margin in the House on legalization, it is a tough, divisive issue. It will raise controversy. Obviously, it will get into an election issue and I do not know that that would help anybody.

Let me just turn to cost. This program, by Congress' mandate, is self-sufficient. If we extend it the 6 months as the House bill proposes, the cost would be $7.6 million a month. Now, that is half of what it now costs us. It now costs about $16 million, so we are talking about cutting it back, but still it is going to cost us $7.5 million a month, or $45 million over 6 months.

In order to offset that, we need 300,000 more applicants, and if we did not get that—let us say we got half of that—it would end up costing $23 million. Where is that coming from? There is no appropriation. Are the aliens going to pay it?

The permanent residents in the next phase might have to pick it up, and I wonder whether people would want that to happen. It certainly should not be taken from other immigration programs that are so important. So that has to be considered, and I think that alone is a significant factor of why not.

Let me just end with this point. Will it accomplish anything? Remember, our program gives another 60 days for people to get the documents in, or more. The House bill is only 6 months. You are only really talking about a few months above and beyond what we already have, and is it worth all the price of all these other things?

I would submit very sincerely it is not. We ought to stick with the game plan that has worked well. There are still a couple of weeks to go. The numbers are coming forward. These other programs are still in effect and we submit that it would be, as I say, bad law, bad policy, and bad precedent.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much, Commissioner. We appreciate your testimony, and I will submit some questions with regard to the INS budget.

But I do want to just take a moment on the issue of the amnesty extension, and I hear your points on this. The fact remains that we have got two different periods of time. We have the 18 months for agricultural workers and a different period of time for the other workers.

You know, it is somewhat difficult for me to understand why you are permitting the additional time for one group and why it is so violative of all the fairness, balance, and all the other kinds of points that you make—why all these kinds of adverse positions or statements that you make with regard to simple extension.

It is certainly not any reflection on the work that has been done by the INS, because I think you have made a very compelling case in terms of how the agency has responded to the current challenges, and that has been, I think, enormously impressive.

But, you know, even your own publications point out that there are still numbers of people that do not have the money in terms of your own surveys. You know, number one is "don't know how to apply." Thirty-nine or 40 percent do not have the money for applications; in October of this year, 45 percent.

So why do we do so much damage by providing a limited period of time for extension?

Mr. **Nelson**. Well, Mr. Chairman, I realize there are obviously a lot of points and arguments on both sides. Of course, Congress made its wisdom known on setting those dates.

I think a lot of us could probably go back and look at different things there, and they included additional time for agriculture. That was a congressional decision, certainly not one that we pushed.

As I say, with the Cranston bill, if you extend one, then you are going to get pressures to extend the others, and I think that is a real concern. I think, again, that the numbers are coming forward well. The fee has really not, as far as we know, ever been—some have expressed that concern, but there has been no indication.

In fact, there are some groups that have provided some interest-fee loan funds for people to apply and a lot of those have gone unused. So I just do not think that has been a deterrent.

Again, I think with the length of time we have had, as I point out, really about 20 months or more, there has been very ample time to apply.

Senator **Kennedy**. Well, as you obviously are aware, the people that have been working with the various groups have certainly reached the conclusion that a limited period of time would be advantageous and just targeting the groups that have been recognized by Congress that should be eligible.

I think, quite frankly, there is legislation considered by the House in terms of the extension of time, not moving the cutoff date, but the extension of application time. I do not think anyone, with all respect to my good friend and colleague from California, believes that there is any reasonable indication that the Congress is going to extend the cutoff date, but there is certainly an indication that it would be desirable by the voluntary agencies to extend the application time.

In the IRS, they are going to be granting hundreds of thousands of extensions in terms of filing taxes, particularly this year with the new bill.

Quite frankly I think it was more of an oversight than a conscious decision to draw a distinction between the two amnesty groups. Anyone can reach their own conclusion on it and I understand that you need finality, and we have seen in past experience when finality is established there is obviously a bulge.

So we understand that, but given the fact that we are not varying the time in terms of the cutoff date, and given the findings of the various agencies and given the fact that we are providing a longer time for agricultural workers, all we are trying to do is have some commonality between the two programs.

It just seems to me to make a strong case in favor of that extension. I understand the position of the administration, but with all due respect it is exceedingly difficult for me to understand the rigidity on this question.

Let me ask, have any family members been deported, to your information?

Mr. **Nelson**. I am not aware of any. Mr. Norton is here and he is shaking his head, so we are not aware of any deportation of family members.

Senator KENNEDY. Commissioner, I would like to move on perhaps to the third panel. If you would be kind enough—Senator Simpson will be back in about 10 minutes. If your schedule permits, if we could hear the last panel, I am going to submit the other questions.

Mr. NELSON. I am happy to do it, Mr. Chairman.

Senator KENNEDY. And then if he does not have any, we will excuse you, but we appreciate very much your accommodating us.

Mr. NELSON. I am happy to.

[Prepared statements of Commissioner Nelson follow:]

Testimony of Alan C. Nelson
Commissioner
Immigration and Naturalization Service (INS)

Mr. Chairman and Members of the Subcommittee:
I am pleased to have the opportunity to be here today to discuss the implementation of the Immigration Reform and Control Act of 1986 (IRCA) and review our achievements to date.

The Act provides a carefully balanced approach to the solution of the Nation's interrelated immigration and border control problems. The Service has continued to work towards full implementation of this legislation, including the implementation of the temporary residency phase of the Legalization program and the Special Agricultural Workers (SAW) and Systematic Alien Verification for Entitlements (SAVE) programs, the implementation of sanctions against employers of illegal aliens, strengthening control on the Nation's Border, and the expeditious processing and removal of criminal aliens from this country.

General Implementation Strategies

In implementing IRCA, the Service: has pursued an approach balanced between education and enforcement; established an atmosphere of openness and cooperation; and moved in a deliberate manner to implement the employer sanctions provisions in the most effective way possible.

The Service went the extra mile in developing the proposed IRCA regulations by taking the unprecedented step of releasing preliminary draft regulations to the general public for their comments and suggestions prior to publishing them in the Federal Register. It is doubtful that any new federal regulations were prepared after more public comment or with greater opportunity for public participation. The input received from interested persons and organizations, as well as by federal agencies, was of great benefit in finalizing these regulations. Similar open approaches were followed with the forms and written materials. In fact, a letter to me from La Raza, dated February 29, 1988, is indicative: "The legalization program posed major challenges to the Service. We have been impressed with the way the Service has met many of these challenges. The process used to develop the regulations was exemplary. Legalization offices were open on May 5, 1987; by and large, the staff at these offices have been courteous and helpful to applicants. And, when circumstances demonstrated the need to change regulations and policy, many of the needed changes were made."

Legalization

Overview

On May 5, 1987, INS opened 107 temporary legalization offices and four large Regional Processing Centers. These offices opened on time to interview petitioners who were to receive the benefits of the legalization and special agricultural provisions of IRCA. A great deal of effort and resources were expended in acquiring the equipment, vehicles, forms and supplies for the legalization offices, and developing the necessary hiring plans. Two thousand new temporary employees were hired and brought on board with unprecedented speed and efficiency.

As of April 8, 1988, a total of 1,540,641 persons had applied for legalization. When the program ends in May 1988, we are expecting that between 1.6 and 1.8 million applications will have been filed.

In charging fees for legalization we followed the Congressional intent and also determined that such fees should be in keeping with those charged for applications of aliens legally entering the country. We believe that the large numbers who have applied without complaint, as well as those who are expected to apply, confirm that the fees are reasonable and fair.

With regard to management of the legalization program, the program was able to carry forward into FY 1988 several millions of dollars in funds. As provided for by IRCA, the INS has been able to operate the legalization portion of this program through user fees--without cost to the taxpayers.

In addition, because the implementation of this program would span several fiscal years, the statute also authorized us to carry forward fees collected in excess of our expenses from FY 1987 into FY 1988.

Use of Qualified Designated Entities (QDEs) was a key step in the implementation of the legalization program. Our implementation strategy called for several hundred QDEs to serve as "brokers" between the alien who would be applying for benefits and the INS.

Nearly 1,000 QDEs have been certified by the Service nationwide. We provided training to over 7,000 individual QDE representatives at nearly 200 sites from May 4, 1987, through December 31, 1987, alone. QDE representatives have participated in our public relations campaign planning. QDEs receive reimbursement for each application accepted by INS. Over one million dollars in advances was provided to the larger QDEs based largely on their projections. Unfortunately, none of the larger organizations has received the volume of applications originally anticipated, although some of the smaller QDEs have performed very well. We have continued to meet with QDE representatives on a bi-weekly basis over the past year in an effort to assist them in the application process. INS looks forward to all QDEs putting in a greatly expanded effort in getting applications filed in the remaining period before the May 4, 1988, cut-off date.

Proposed Extension of Legalization Application Period

By April 8, INS had accepted nearly 1.6 million Legalization and SAW applications, a total that is three times the number that have applied in all other nations' programs combined.

The program has worked well, and as we said earlier, at no cost to the taxpayers. In addition, a new major advertising information campaign involving QDEs, states and local INS offices was launched January 15, 1988, which should help to increase the application rate.

No Reason to Extend

There is no reason to extend the application period. In fact, we believe that the major threat to the program is talk of an extension. Aliens hearing such speculation are very likely to be confused by it and believe that they have longer to apply, thus delaying their application.

Furthermore, IRCA is a carefully balanced statute. Changes to the legalization portion would likely upset the balance, which is a good one and should not be altered. The Administration believes that the May 4, 1988, deadline provides adequate time for aliens to apply for legalization, especially with our expanded efforts to reach every qualified applicant.

The numbers of applications received to date prove, in fact, that the program has been a success. By the May 4 deadline, our best estimates indicate that between 1.6 and 1.8 applications will have been filed. Processing of the applications at our four regional processing facilities has proceeded smoothly as a result of efficient screening and review at the local legalization offices. The approval rate for the applications has been approximately 98 percent, higher than anticipated when the program began.

The success of the legalization program, however, must not be judged solely in terms of the number of applications filed during the one-year legalization period. It is equally important to consider the long-term effects of this legislation, such as the adjustment to permanent residency under the Special Agricultural Worker Program, the updated Registry Program, and the Cuban-Haitian Adjustment Program, and ultimately the naturalization of eligible aliens under the legalization and SAW programs. In addition to the estimated two million persons under all of these programs combined, derivative benefits will be accorded to eligible family members of these individuals. INS initial estimates indicate that as many as three million family members may be eligible for benefits.

Finally, INS is concerned about the likely cost impact of any extension to the legalization program. The total fee receipts estimated for the temporary resident phase should range from $208 million to $240 million. This is expected to pay for the program as predicted. Nevertheless, any extension will result in increased costs to this program for leases, personnel, and overhead for keeping offices open beyond the proposed time period. At a time when fiscal restraint is a matter of national concern, an extension of the legalization program -- whose benefits are by no means assured -- would not justify the attendant costs.

Special Agricultural Worker Program (SAW)

Of the 1,540,641 legalization applications which we have received through April 8, 1988, 373,945 are from SAW applicants. The growers are making significant progress in employing a legal workforce, either from the ranks of the unemployed, the newly designated SAWs, or through the new H-2A program, which allows them to bring in foreign workers when a need can be demonstrated.

The Service has remained flexible in its implementation of the SAW program. Because crop and economic losses would likely have resulted if a predicted shortage of agricultural labor had occurred in the Northwestern United States, the Service implemented a temporary transitional program called the SAW TRANSITIONAL ENTRY PROGRAM. The special four month transitional program was initiated on July 1, 1987, at the Port of Calexico and at consulates overseas to expedite the admission of SAW applicants. Under this program, SAW eligible workers were admitted and allowed 90 days to work and complete their applications.

SAW S9 Entrant Program

On December 22, 1987, President Reagan signed Public Law 100-202 which amended section 210 of the Immigration and Nationality Act governing the Special Agricultural Worker program. INS supported the amendment which provides for the admission and granting of employment authorization at designated ports of entry on the southern land border to a SAW applicant without the normally required documentary evidence of eligibility. These SAW applicants are granted employment authorization for 90 days during which time they can gather the needed documents and file a SAW application in the United States. Additionally, the June 26, 1987, cutoff date by which an applicant must have been in the U.S. to be eligible to file a SAW application has been eliminated. The Department has stayed deportations and granted a work authorization for any alien in the United States who has filed a non-frivolous SAW application as that term has been defined by the Service. The amendment provides explicit authority for the deportation of any illegal alien who has not filed a non-frivolous application notwithstanding the alien's claim to SAW eligibility.

Results to Date

INS has taken a number of administrative actions to handle the anticipated "last minute rush" by legalization applicants to apply by the May 4, 1988, deadline. These actions include: extending Service legalization office hours during weekday evenings and on Saturdays; expanding the use of mobile vans for accepting and processing legalization applications; and implementing various programs to increase the participation of QDEs in assisting legalization applicants. The Service will continue to take administrative action as necessary to ensure that all potential legalization applicants are afforded every opportunity to apply by the deadline and to accept and process all applications filed in an effective and efficient manner.

Among the activities that local INS offices have engaged in to publicize and encourage applications are:

> Day-long radio broadcasts in Spanish from legalization offices;

Banners towed behind airplanes at public events;

Local proclamations and "Legalization Day" events in cities throughout the country;

Town meetings with INS officials and community leaders to answer questions about legalization;

Radio and television question and answer programs;

Press conferences;

Information booths at public shows, conventions, and shopping centers;

Workshops for community and ethnic volunteers;

Distribution of flyers.

Public Information on Legalization

A Public Information and Education Campaign began shortly after the IRCA was signed by the President. A summary of this initial phase includes:

- Messages concerning both Employer Sanctions and Legalization on a toll-free 800 telephone information system in both English and Spanish.
- Nationwide information and education program resulting in over 1,000 public meetings and press conferences which in turn resulted in publicity in newspapers, magazines, radio and television.
- Five (5) national press conferences for employer sanctions and over 300 regional press conferences and interviews with local media to answer questions about the law.
- The I-9 Employment Verification and Employers Handbook was designed and produced with a large degree of public comment. Seven million handbooks were distributed to U.S.

employers through a special mailing by the IRS.

- 500,000 copies of the Employer Brochure with detachable poster and Employment Eligibility Verification form.
- A 15-minute instructional videotape, distributed nationwide, on the Employer Sanctions verification process.

On April 1, 1987, the INS selected a contractor for the Public Information Campaign and the first television, radio and newspaper advertising appeared on April 20, 1987, well in advance of the opening of the INS' legalization offices.

The 1987 Campaign was also balanced in its treatment and allocation of resources between Employer Sanctions and Legalization. Here is a summary of the highlights of the Campaign:

- A paid national media advertising campaign that generated more than 592,000,000 impressions.

- Advertising messages in 48 different languages.
- Equal spending for media dollars between Employer Sanctions (51%) and Legalization (49%).
- Spanish language broadcast (television and radio) which we believe reached most Hispanic households. The television ads ran on two national (English and Spanish) networks.
- SAW radio commercial covered five Western states.
- National trade, business and consumer magazines carried Employer Sanctions advertising.

Research

From the outset of the Public Information Program, research has played a key role in determining the strategy for the campaign.

The research considers employers as well as illegal aliens. We have presented below a summary of our research efforts:

1.	April 1987	Evaluation/Research of the Employer Handbook (I-9).
2.	May-October 1987	Business Analysis: An analysis of applications by legalization offices.
3.	June 1987	Legalization Research. Focus group testing. 644 interviews.
4.	July-August 1987	Hispanic Focus Group testing.
5.	October 1987	Employer Focus Group testing.
6.	October 1987	Legalization Research. Focus Group Testing. 474 interviews.
7.	October 1987	Asian Focus Group testing.
8.	November 1987	Asian In-depth Research.
9.	October-November 1987	Employer Baseline Survey.

10.	December 1987- January 1988	IRCA and the Small Business, A Special Study.

Legalization Campaign (1988)

The overall strategy of the final phase of the Legalization campaign is to design a media plan that reaches all eligible illegal aliens and motivates them to apply for legalization before May 4.

The following are highlights and special features of the 1988 Legalization campaign:

- Launch a legalization campaign with a $3.1 million media buy on January 15.
- Design the campaign for English, Spanish and multi-ethnic languages.
- A campaign with ads that will be seen over a billion times.
- Use of traditional media such as radio, television and newspapers.

- Use of a new medium: Billboards and transit or bus card advertising.

- Independent funding of the INS regions for customized promotion in specific regions.

- Production of collateral materials such as multi-lingual handbooks on legalization posters.

New INS Initiatives

As you know, on March 18, 1988, the INS announced two changes which will provide further opportunity for every eligible alien to obtain legal residence in the United States.

Simplified Filing Policy

The first of these is a simplified filing policy, which INS has been considering. Beginning April 4 and running until the deadline of May 4, 1988, applicants will be given the option of filing a completed application, accompanied by the filing fee, but will not be required to file documentation or medical information support to the application for at least 60 days.

The application requires biographical information, which can easily be listed. The application can be completed in less than 30 minutes. Without the requirement of immediate documentation there is no reason for any qualified applicant not to file by the May 4 deadline.

The applicant will be scheduled for an interview 60 days or later after the deadline, starting July 5, and employment authorization will be granted through the date of the interview. At the time of the interview documentation will be required.

Those who wish to supply documentation with their application will continue to be eligible for an immediate interview and issuance of the six-month work authorization card.

QDE Incentive Program

The second change involves the Qualified Designated Entities (QDEs). It is called Legalization Incentive and allows them an opportunity to collect their fees for assisting applicants simply by providing them with a form that includes the QDE identification number and directing them to an INS legalization office. The QDE agencies will not be required to perform any processing on the application, as they have had to do in the past to collect the fee of $15 or $16 for each completed application submitted to INS ($15 for local QDEs; $16 for national QDEs).

Among the reasons QDEs have cited in accounting for less than 20 per cent of the applications received by INS is the amount of time required to prepare the application. They have said it takes them an average of three hours to process an application. The objective of the Incentive Program is to relieve the QDEs of this paperwork burden, and allow them more time to locate aliens eligible for legalization. QDEs represent their ability to reach undocumented aliens. This provides an opportunity for them to do so and to help assure that all qualified applicants come forward.

INS will continue to assist aliens who are in need of it to complete the application.

States Designated

In addition, all 50 states are being designated as QDEs, which permits all state agencies to collect the referral fee for identifying legalization applicants and directing them to INS.

These steps, along with others, which INS has already taken, such as extended hours for legalization offices, provide ample opportunity for all eligible aliens to apply for this generous benefit by the May 4 deadline.

We have discussed the steps we have taken and the changes mentioned above with many members of Congress and others interested in the program, and their comments have generally been supportive.

In that context, we are pleased with the relationships with these agencies and the support many of them have provided in legalization.

Final Decisions

The rate at which final legalization decisions are being rendered continues to increase.

As of April 8, 1988, we have adjudicated and made final decisions on 905,841 of the 1,540,641 cases filed with the Service. Of the total completed cases, 888,334, or 98%, have been approved. Of these completed cases, 766,672 were regular legalization program cases and 121,662 were SAW applications.

As part of our adjudication of these cases, we have discovered that some cases are fraudulent. As of April 8, 1988, workload statistics reveal a relatively small, five (5) per cent of all cases, being suspect of fraud. Of this five percent, less than one (1) percent has been confirmed as involving fraud.

We are experiencing a moderate rate of fraud in the SAW applications to date. It is running at about 17 percent overall.

This was expected when the implementation of this program was being planned after the passage of the Reform Act. To counteract it, a vigorous program is in place to detect and prosecute fraud in an attempt to reduce its incidence.

Due to the short term nature of the legalization/SAW programs, the Service has aggressively prosecuted cases wherever possible with special emphasis given to complex cases involving multiple schemes/conspirators. There are several such large-scale investigations underway. Presently, more than 100 investigations are underway nationwide involving persons who have arranged for individual applicants in suspected SAW fraud cases to obtain illegal employment ("arrangers"). Investigations completed to date have already yielded 157 indictments of arrangers and individual applicants in SAW fraud cases, and 11 convictions. Although the application periods for the legalization and SAW programs end later this year, the Service will provide centralized direction and support in the identification and investigation of the largest and most extensive cases involving third party conspiracies.

Employer Sanctions

We take pride in the job we have done during the past year to effectively implement the employer sanctions provisions. In this short time, the Service has promulgated regulations, undertaken a massive public education effort, developed guidance to ensure uniform implementation of sanctions Service-wide, and initiated a number of significant enforcement actions.

The Service's enforcement efforts have been phased in during the last year through a three-step process, encompassing employer visits, citations, and penalties. The Service began embarking on an ambitious employer visitation program. Subsequently, employer investigations resulted in strong cases against major violators, signaling the Service's intent to fully enforce the law. The compliance inspections (or random audit) program, now in a pilot phase, adds an enforcement component that will reach all segments of the employer community.

This balanced approach has encouraged employers to cooperate with the law, while sending a clear message to those who willfully disregard its requirements. Our goal is to ensure that employers hire citizens and legal aliens and do not hire unauthorized aliens. We want employers to comply. For those who do not, penalties are the means to ensure that we realize the objectives of the law.

The success of the Service's efforts is widely evident, as demonstrated by the following accomplishments:

- 700,000 Educational Visits. These visits are performed to advise individual employers of their responsibilities and assist them in complying. Our goal is one million visits by the summer of 1988.
- 1587 Citations. Citations provide employers with a warning for the first violation that comes to the attention of the Service.
- 78 Notices of Intent to Fine. These cases are carefully developed, with documentation that the Service has educated the employer and provided opportunities for compliance prior to seeking penalties.

Random Audits

In February 1988, INS initiated a program of random audits of employers to determine compliance with employer sanctions. Local agents visit inspection sites using lists of employers generated by a random selection method. Half of the inspections are geared toward employment sectors that in the past have been shown to employ significant numbers of illegal aliens. The other sites are chosen from among all employment sectors.

The program has been underway for just over a month, in 11 areas of the country. Evaluation is underway. Our preliminary determination, however, is that the plan is effective in identifying those areas where noncompliance is most likely, and is also a fair way to determine which employers to select for inspection. We anticipate implementing nationwide within the next two months.

Employer Education

Employer education is the initial step in our three-phased approach to employer compliance with the new law. We want employers to realize that the sanctions law is a good one. It is good for the United States to deter illegal immigration, and it is good for businesses to verify their workers.

Therefore, during this first year we have conducted the visits to employers solely for the purpose of informing them of their responsibilities under the law. Those visits, 700,000 to date, conducted by Investigations and Border Patrol agents, Employer and Labor Relations staff, and Service employees from a wide range of components, have been widely praised.

Employer and Labor Relations

To provide impetus for the educational program, we established within the Enforcement branch an Employer and Labor Relations (ELR) unit. During 1987, we trained 71 employees to fill ELR positions in Washington, at the regions, and within Investigations and the Border Patrol in our field offices. Those field positions comprise the core of ELR, serving as the catalyst to work with employers and labor to make sanctions succeed.

The ELR mission is carried out through public speaking engagements; seminars and conferences; discussions with trade, professional and labor organizations and other interested groups; preparations of printed and audio-visual materials; and visits to employers. All of these programs demonstrate to employers that compliance with IRCA can be accomplished without undue difficulty, and assure employers that there are abundant sources of legally authorized workers.

Those efforts have reinforced the Service's expectation that employers will voluntarily comply. The vast majority of employers contacted indicate a strong desire to observe the law.

Legally Authorized Worker (LAW) Program

Many employers have told us that they understand the law and wish to abide by it, but claim to have difficulty finding lawful workers to replace persons unauthorized to work in this country. To assist these employers, the Service has established the Legally Authorized Worker (LAW) Program which will function as a liaison between employers and various employee resource pools (such as state employment agencies, state refugee offices, and welfare departments). When fully operational, the LAW Program will provide lists of labor sources to assist employers in identifying legal workers. We believe that this may be helpful in reducing the number of persons in the welfare system.

Enforcement

The Service has issued a comprehensive Field Manual that defines procedures and policies for education, employer investigations, and compliance inspections. This manual ensures that sanctions implementation occurs in a consistent manner, while permitting local managerial flexibility.

For the first year of enforcement, we established a policy that no employer will be fined unless first, there has been an educational contact to explain the law and second, a warning citation was issued in cases of non-compliance. Only after these first two steps would we issue a Notice of Intent to Fine during this first year.

Employer investigations following this three-step process began in the summer of 1987. The first citation was issued in August and the first Notice of Intent to Fine was served in October. To date, we have issued 1,587 citations and 78 Notices of Intent to Fine. In many of the early cases, the employer has already paid the fine.

We believe that a growing number of the nation's employers are understanding the message about this new law and are complying with it on a voluntary basis. A survey by the U.S. Chamber of Commerce in October 1987 and a preliminary report issued by GAO in November 1987 verify that employer sanctions have been implemented effectively and fairly to date. GAO states further: "INS's planned enforcement strategy, including random inspections of employers combined with investigations of suspected violators, is reasonable. As a result, we believe that progress made during the first year to implement the law is satisfactory." United States General Accounting Office, Immigration Reform: Status of Implementing Employer Sanctions After One Year, at 30 (November 1987) (GAO/GGD-88-14).

To conclude, the Service has accomplished a great deal in this first year of enforcement. Our open regulatory process, educational efforts, and careful investigative procedures are building the foundation for the employment sanctions provisions to have a lasting impact on our nation's immigration problems.

Systematic Alien Verification for Entitlements Program (SAVE)

Pursuant to Section 121 of the Reform Act, the SAVE Program has been expanded to support a national effort to prevent illegal or ineligible aliens from receiving benefits through federally funded entitlement programs, such as Aid to Families with Dependent Children, Medicaid, unemployment compensation, food stamps, and certain housing and educational assistance programs. In order to deliver the program in the most cost-effective manner, an operational database was created and is now available for nationwide access. Careful consideration is given to user data requirements.

The SAVE data base is accessible via seven highly adaptable computer access methods: touch-tone telephone, point-of-sale, 3270 and a synchronous dial-up, electronic file transfer, remote job entry and tape access. For those states with a very small alien population, a simple, manual process is available. Verification of alien status may be accomplished in either English or Spanish. Currently, twenty states and territories have formal SAVE agreements: Arkansas, Colorado, Florida, Guam, Hawaii, Idaho, Illinois, Indiana, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, Puerto Rico, Texas, Utah, West Virginia, Wyoming, and the Virgin Islands.

The SAVE Program continues to produce impressive results: INS has calculated that over 47,000 ineligible aliens were identified during fiscal year 1987 for a total cost avoidance estimate in the tens of millions of dollars. This, however, is only a fraction of the savings potential offered by SAVE. More states are becoming part of SAVE. States anticipated to join the program in the near future are Alabama, Arizona, California, Maryland, Minnesota, New York, Ohio, and South Carolina.

The Immigration Reform and Control Act of 1986 mandates full compliance by October 1, 1988, by the designated entitlement programs, with the exception of those granted waivers by various responsible departments and agencies.

Border Apprehensions Increase

Moving to another topic, Border Patrol apprehensions of illegal aliens on the Southern Border rose to 115,119 in March, a 15 per cent increase over March 1987, but still 29 per cent below the 163,128 of March 1986. January and February 1988 apprehensions had also increased over 1987, but were also substantially below

1986. In 1987, the Border Patrol apprehended 1,158,030 illegal aliens, which was down 31.6 percent from the 1986 record of 1,692,544 illegal aliens.

It is always difficult to assess why the flow of people illegally across the border increases or decreases. We remain confident that the sharp declines we experienced from November 1986 through December 1987 were a direct result of the passage of IRCA, particularly the employer sanctions provisions.

Meanwhile, the economic problems in Mexico and elsewhere in Latin America that create the "push" factor for illegal migration to the United States remain significant. We will continue to assess the monthly apprehension levels, but at this point it is too early to determine if the increases we have seen represent a trend.

War Against Drugs

INS is in the forefront in the battle to keep drugs from surreptitiously entering the United States. The Border Patrol is currently responsible for more than 60 per cent of the marijuana and 57 per cent of the cocaine intercepted on the Southern land border.

In the last fiscal year, Border Patrol cocaine interceptions totaled 12,813 pounds, a five-fold increase over the previous year. Value of seizures for 1987 were $582.4 million, a 112% increase over 1986. If the trend continues from the first quarter of 1988, it will be another record year.

INS has recently purchased 13 sniffing dogs used to detect hidden drugs, and also to detect and save illegal aliens being smuggled into the United States in boxcars, trucks, and other conveyances.

As part of the drug education effort, these dogs are also being used in presentations to school children. One of these units was in the Washington area in February for the White House Conference on a Drug Free America and made presentations at schools in Virginia, Maryland, and Washington, D.C. In Texas, Border Patrol agents have made presentations before more than 70,000 school children to acquaint them with the dangers of drugs.

On December 23, 1986, the INS joined the **Organization Crime Drug Enforcement Task Force (OCDETF) Program.** This was the result of recognition by member agencies of the Task Force Program that the INS could substantially enhance current efforts by its statutory responsibility under the immigration laws. During May 1987, thirteen full-time INS core city coordinators were selected, and entered on duty. An additional 87 Special Agent positions were committed to staff the 13 OCDETF regions, and by the end of the second quarter of Fiscal Year 1988, approximately 80 of these positions were selected and filled.

Criminal Alien Issues

The Investigations Division is undergoing expansion to support higher levels of activity in efforts dealing with criminal aliens. As part of this effort, INS instituted the Four City Pilot Program in February 1987 in Los Angeles, New York, Miami, and Chicago in response to the mandate of the Narcotics Traffickers Deportation Act which is part of the Anti-Drug Abuse Act of 1986. The pilot program is designed to establish or improve automated information exchanges on alien narcotics traffickers and drug offenders. The first computer information exchange system has been designed and tested. It is scheduled for installation in Chicago by the end of April 1988 and will obtain data from the Cook County Jail records and the State prosecutor. The systems for the remaining three pilot cities will be designed after the testing and acceptance of the Chicago prototype.

INS and the Department of Justice, Executive Office for Immigration Review, have developed the Institution Hearing Program (IHP). The purpose of the IHP is to ensure that expulsion hearings are completed in the local, state, or federal institutions, thereby reducing detention costs and expediting the removal of aliens upon completion of their sentences and release to INS custody, and to effect their deportation, where appropriate. Agreements are being negotiated with state penal institutions and the Bureau of Prisons to arrange for hearings for deportable aliens incarcerated in those institutions.

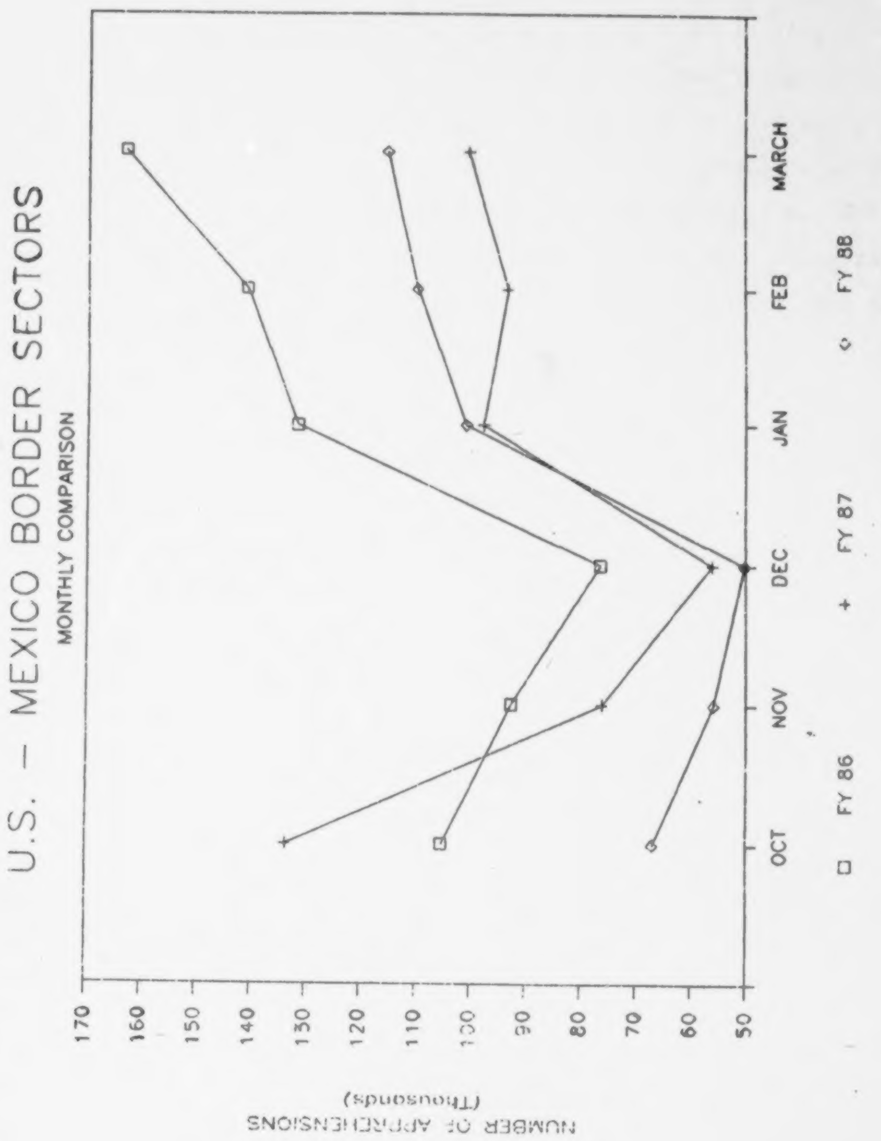
INS Special Agents completed 18,315 criminal aliens cases in Fiscal Year 1987 as compared to 12,543 in Fiscal Year 1986. These cases were mostly completed under Phase I of the Service's Alien Criminal Apprehension Program. As Phase I continues, the Service is developing plans for proactive efforts targeting specific criminal aliens (and organizations with which they are associated) through multiple and simultaneous operation at cities and locales throughout the United States.

Supplementary Information

Attached are charts illustrating some of the key points I have covered regarding the implementation of IRCA.

Conclusion

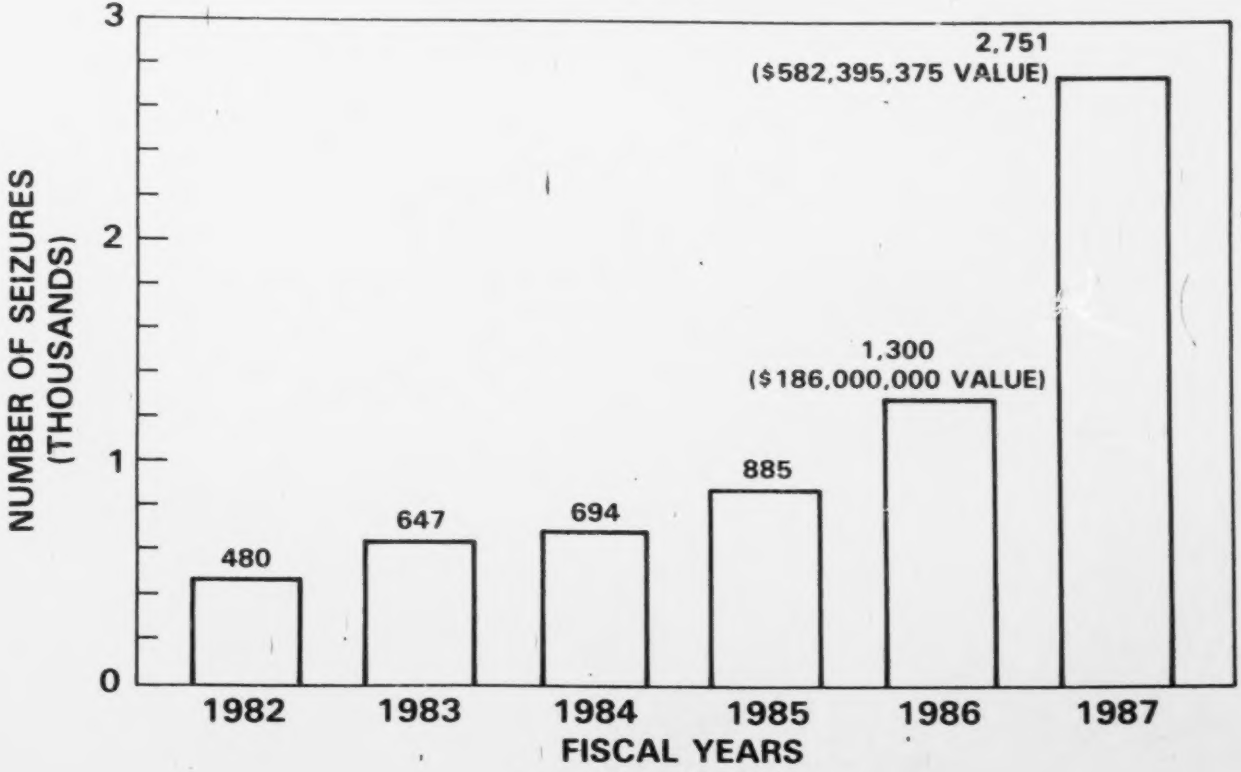
While we can take pride in what has been achieved in the implementing of IRCA to this point, we realize the job is not completed. Much more remains to be done in the next month. I look to the future with confidence and enthusiasm. We anticipate there will be a surge of legalization applications during April, and our objective is to attain as large a turnout as possible. It is our joint plan and goal that on May 4 no one who is eligible for legalization will have failed to apply. Thank you all very much for your support of our efforts over the last year. INS looks forward to working with the Congress in the continued effective implementation of IRCA.



SOURCE: U.S. BORDER PATRL

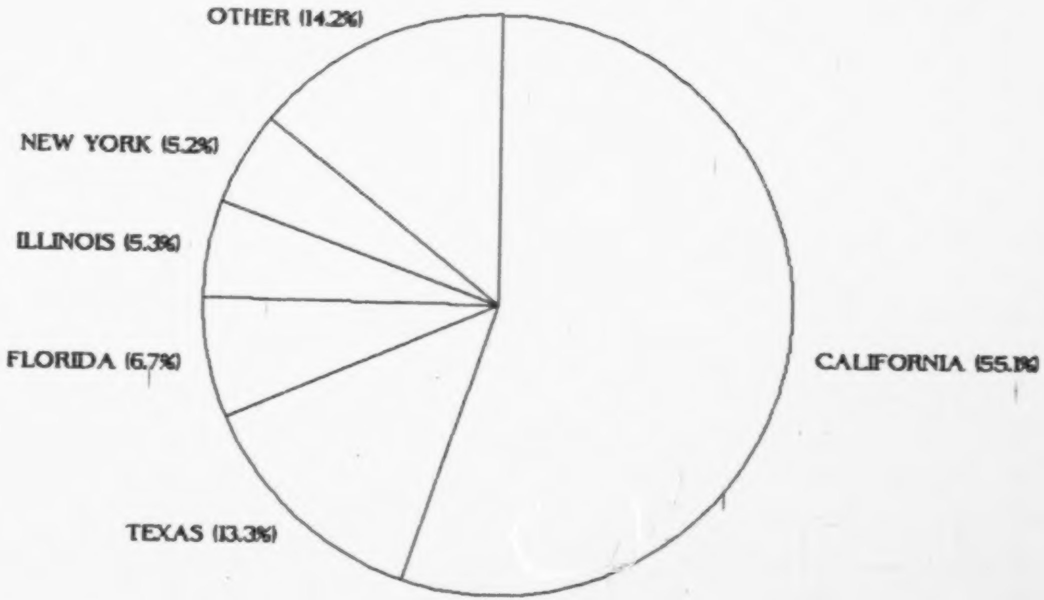
BORDER PATROL

NARCOTICS SEIZURES



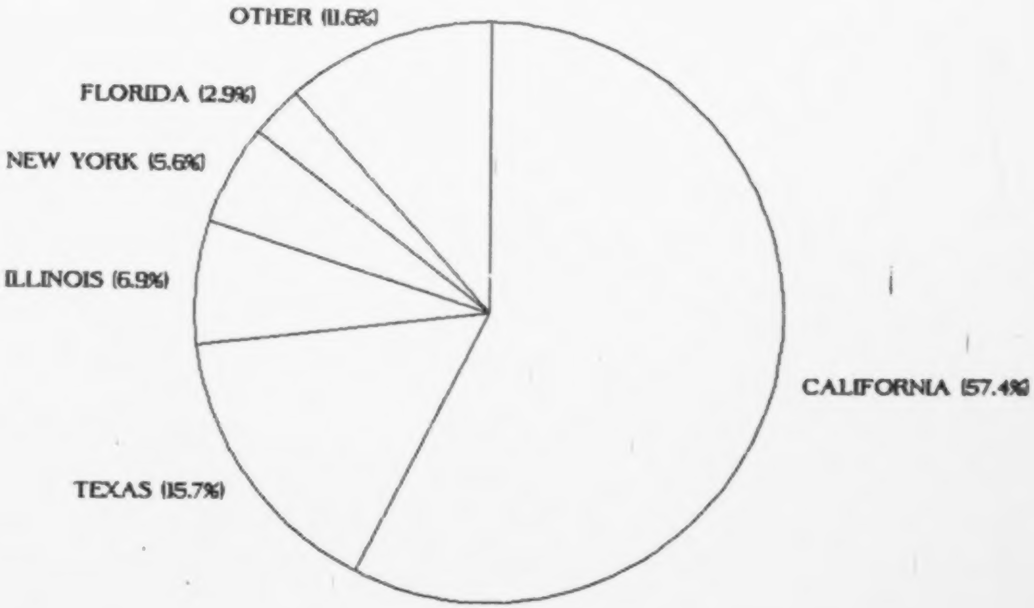
LEGALIZATION & SAW PROGRAMS

APPLICATIONS RECEIVED: AS OF 4/08/88



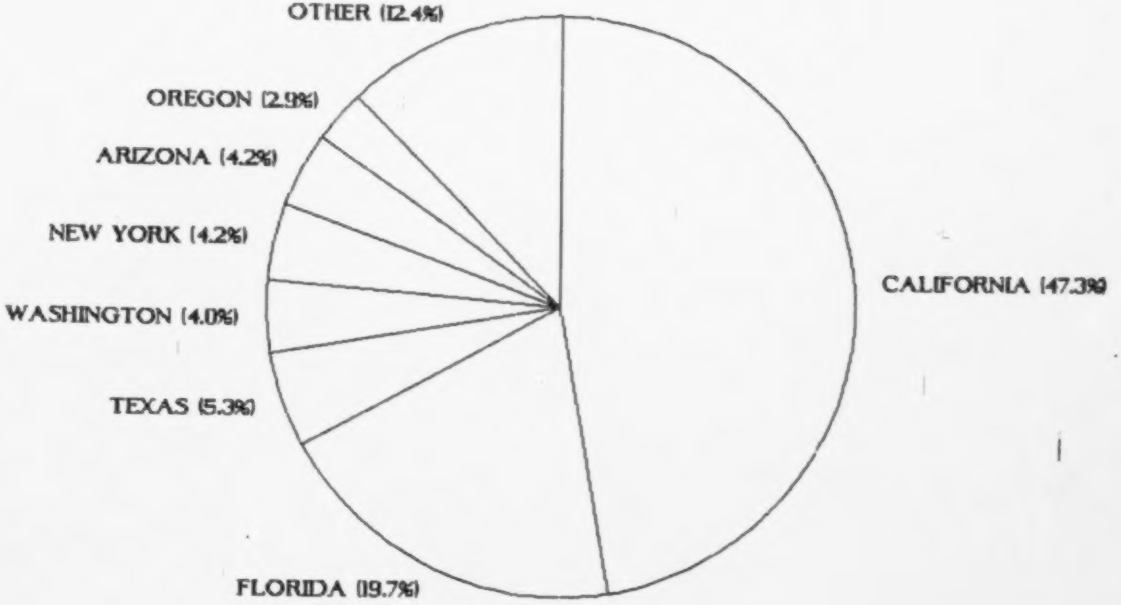
LEGALIZATION PROGRAM

APPLICATIONS RECEIVED: AS OF 4/08/88



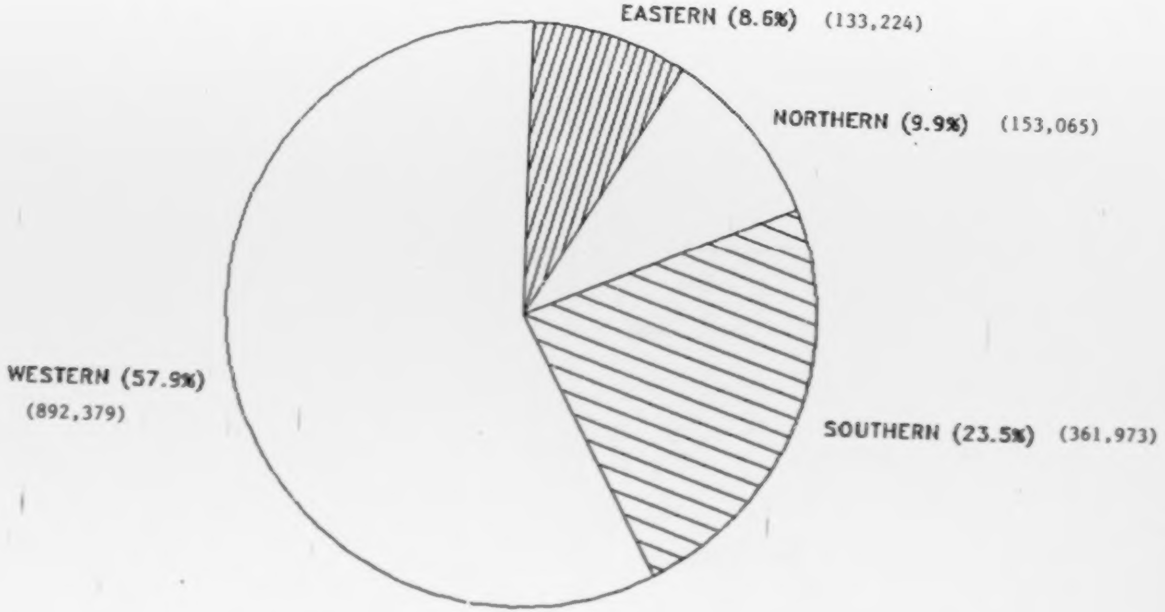
SAW PROGRAM

APPLICATIONS RECEIVED: AS OF 4/08/88



I-687 & I-700 APPLICATIONS RECEIVED

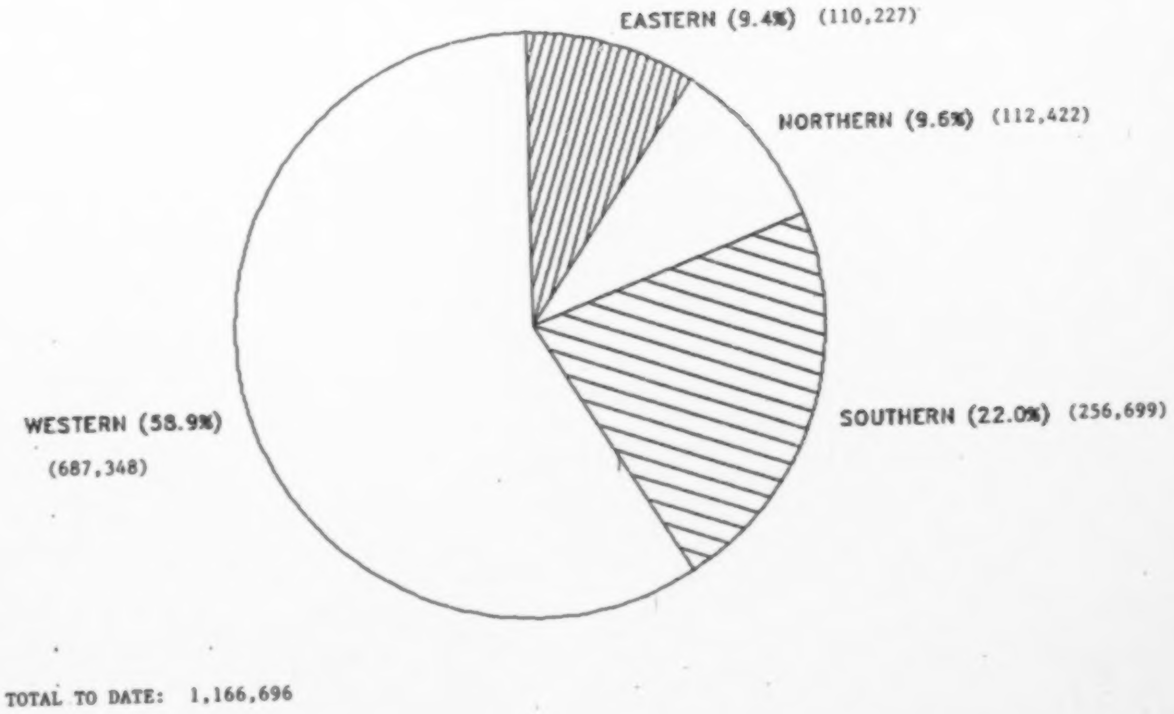
AS OF 4/08/88 - SERVICEWIDE



TOTAL TO DATE: 1,540,641

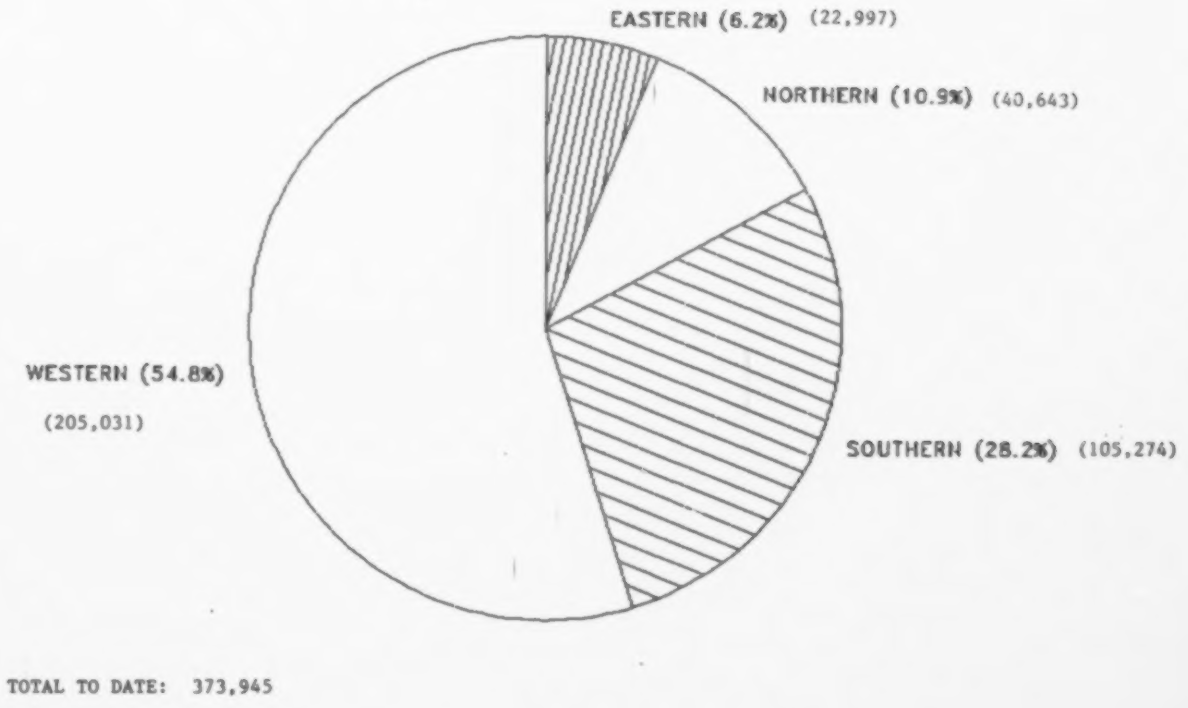
I–687 APPLICATIONS RECEIVED

AS OF 4/08/88 – SERVICEWIDE



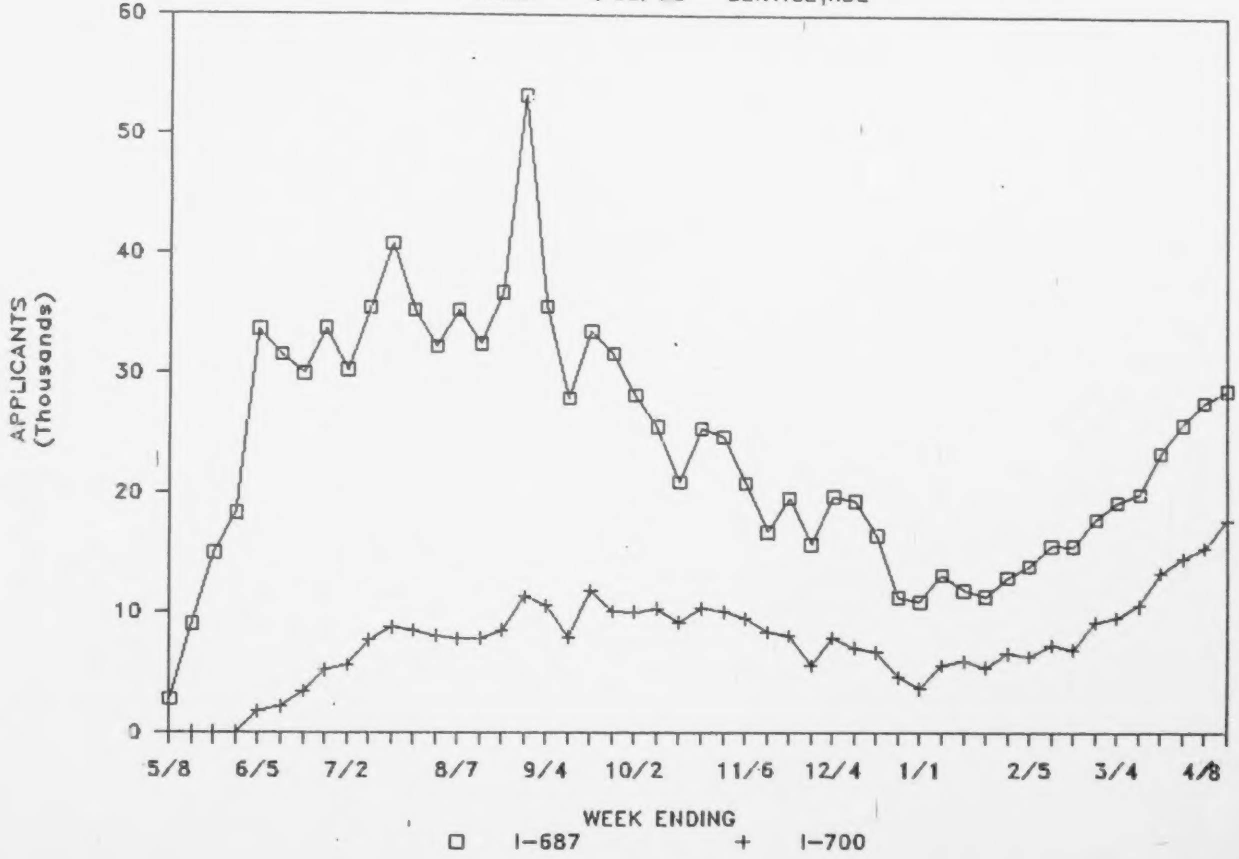
I–700 APPLICATIONS RECEIVED

AS OF 4/08/88 – SERVICEWIDE



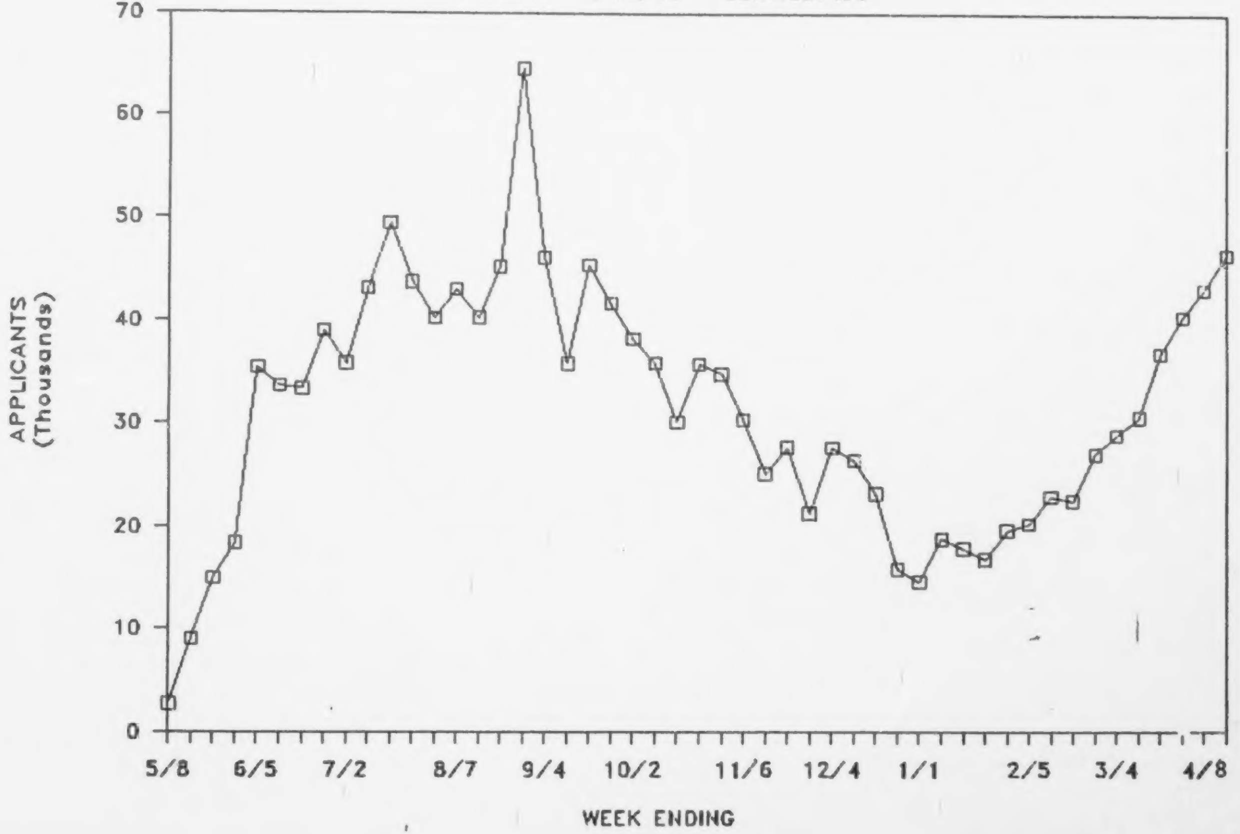
I-687 & I-700 APPLICATIONS RECEIVED

WEEKLY - 4/08/88 - SERVICEWIDE



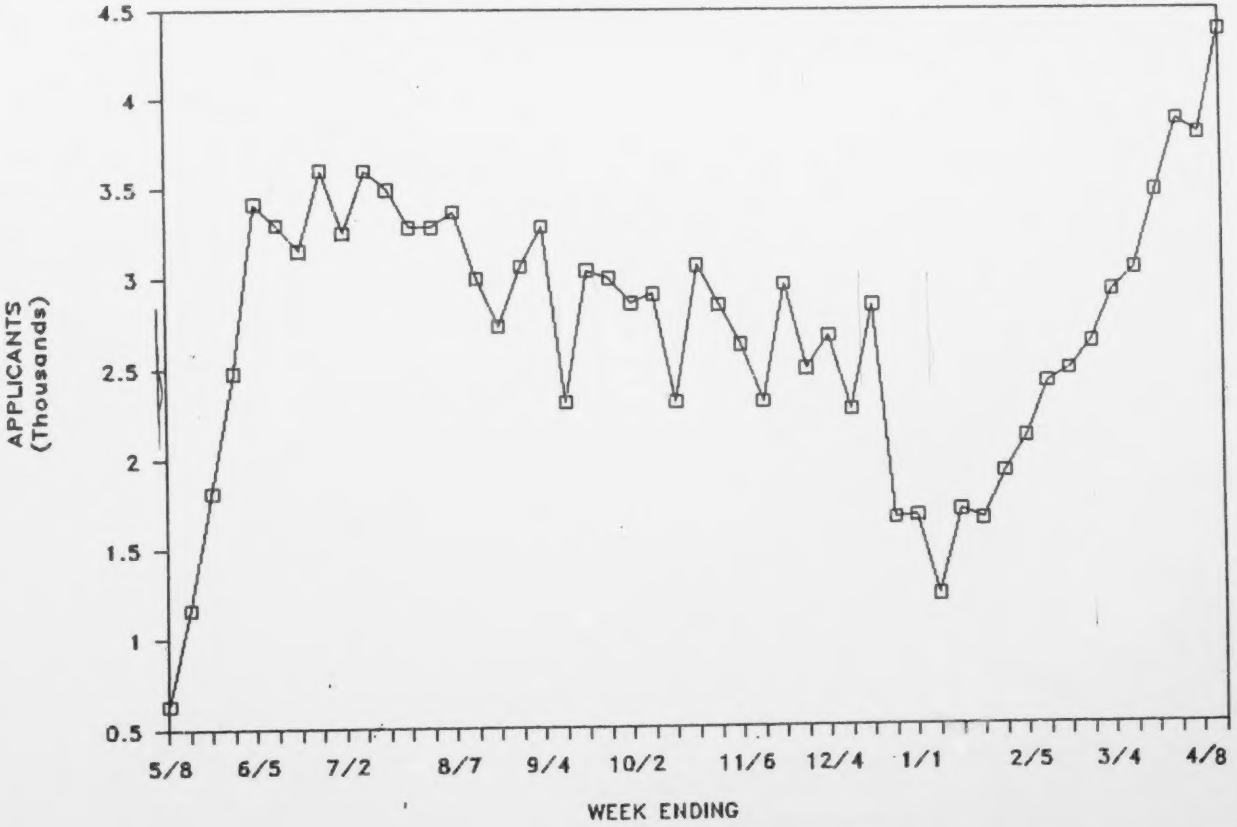
I-687 & I-700 APPLICATIONS RECEIVED

WEEKLY - 4/08/88 - SERVICEWIDE



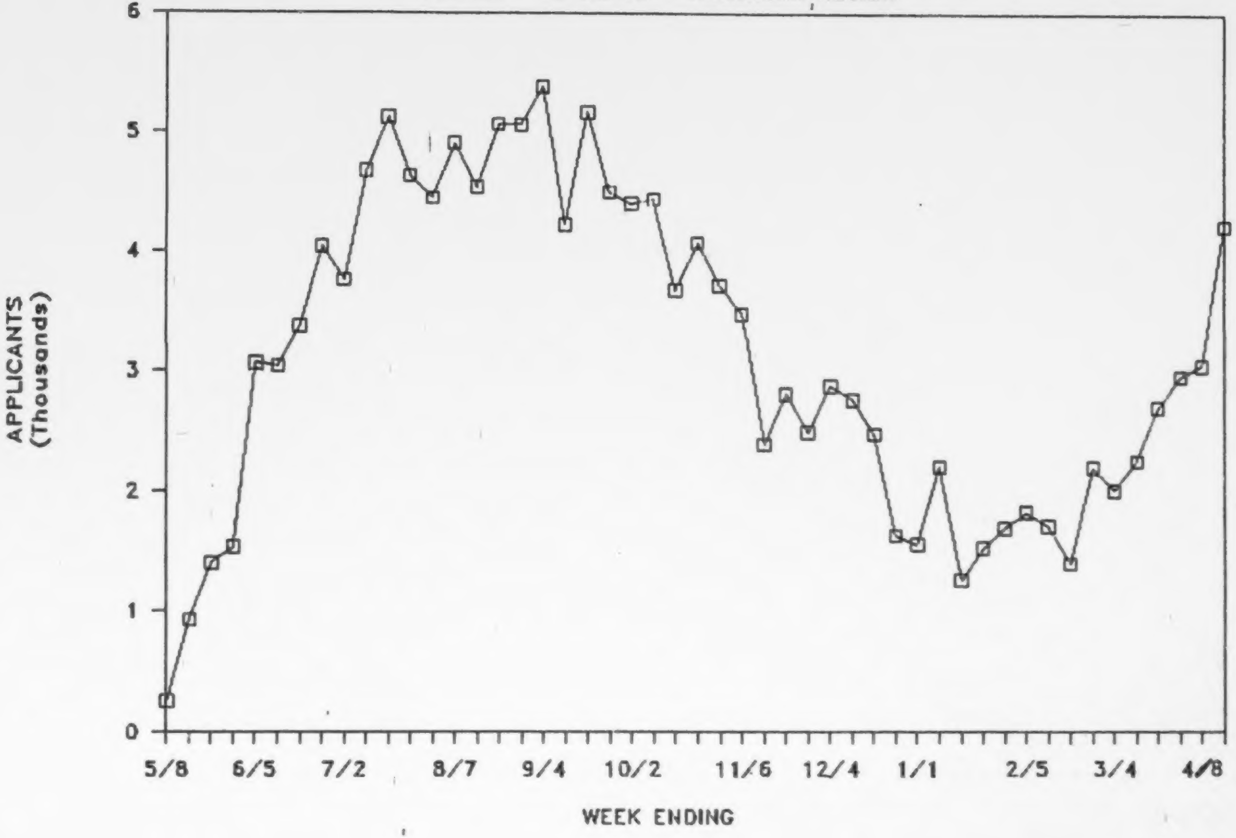
I-687 & I-700 APPLICATIONS RECEIVED

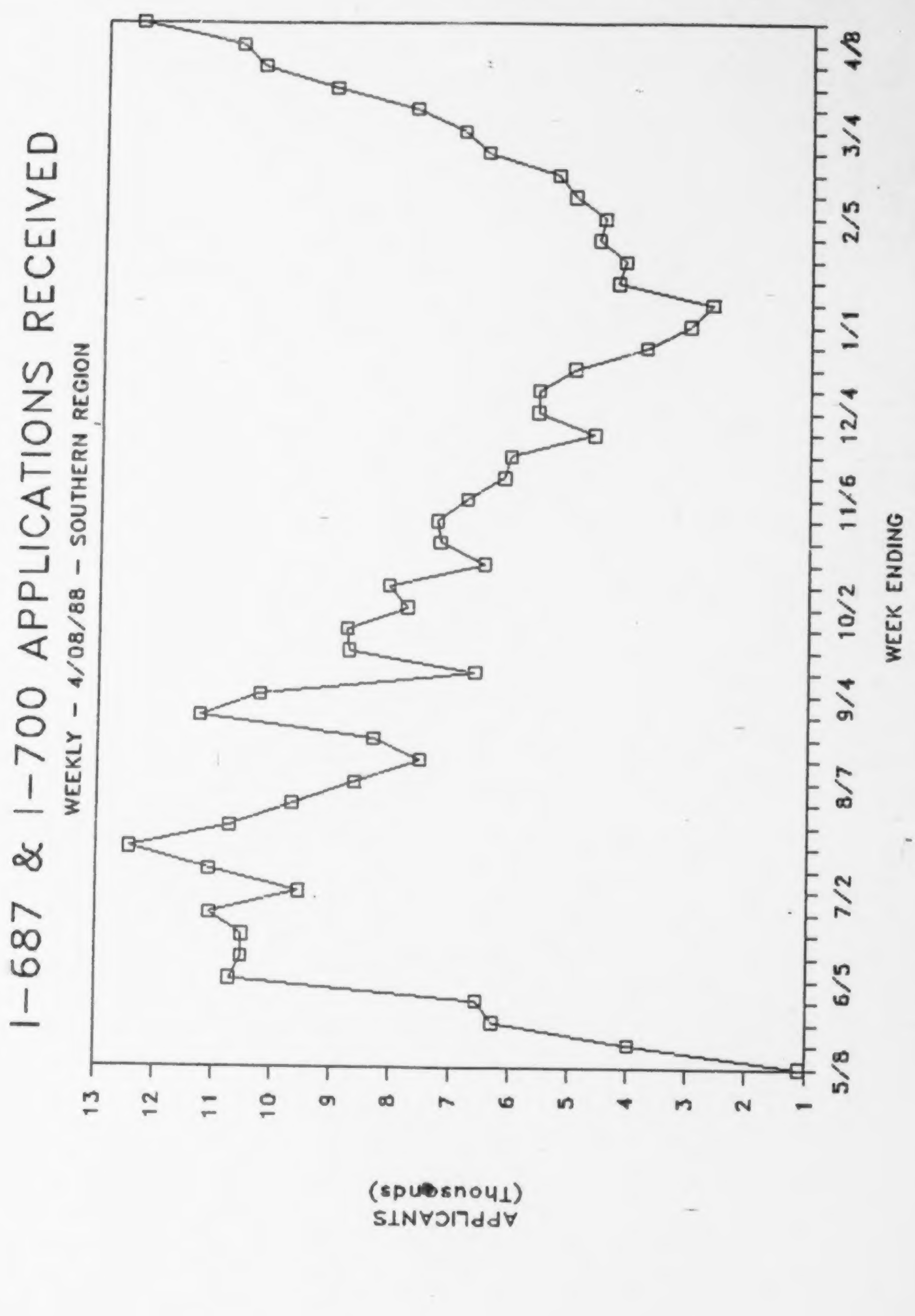
WEEKLY - 4/08/88 - EASTERN REGION



I–687 & I–700 APPLICATIONS RECEIVED

WEEKLY – 4/08/88 – NORTHERN REGION



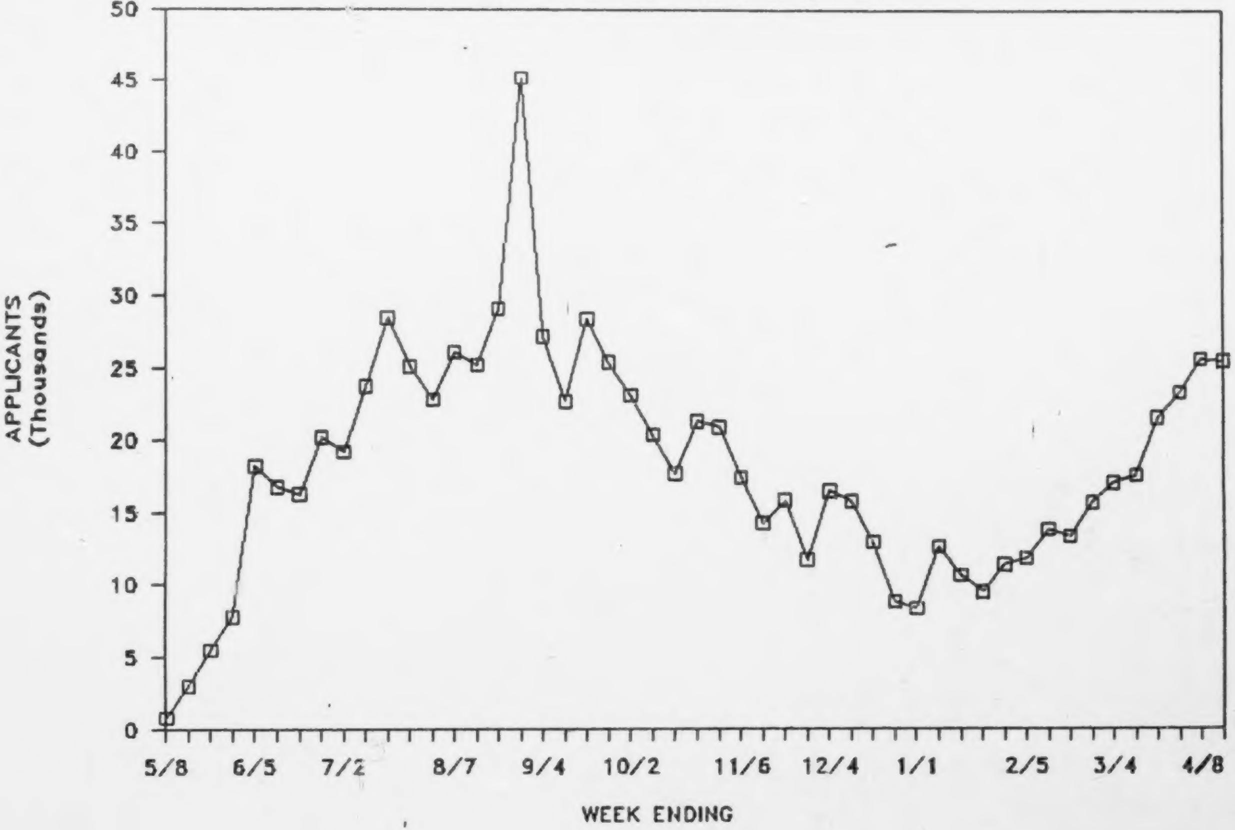


I–687 & I–700 APPLICATIONS RECEIVED

WEEKLY – 4/08/88 – SOUTHERN REGION

I-687 & I-700 APPLICATIONS RECEIVED

WEEKLY – 4/08/88 – WESTERN REGION



DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
SUPPLEMENTAL STATEMENT OF THE COMMISSIONER
ALAN C. NELSON
BEFORE THE HOUSE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS
SENATE JUDICIARY COMMITTEE
April 14, 1988

Mr. Chairman and Members of the Subcommittee:

In addition to my oversight testimony, I am pleased to have the opportunity to appear here today in support of the 1989 budget request for $859,276,000 and 15,443 positions for the Immigration and Naturalization Service. When funds from the non-appropriated Immigration User Fee ($75.1 million) and Legalization ($82.2. million) accounts are included, total resources available to the agency will exceed $1 billion in 1989.

The 1989 budget request includes an increase of $9,200,000 in our Detention and Deportation Program to staff two facilities which are expected to be ready for operation: one in the Los Angeles area and a second facility at Oakdale, Louisiana. Both will be used to detain criminal aliens awaiting deportation. The budget also contains two decreases. The first $7,054,000, is made possible in the Special Agricultural Workers (SAW) Program as a result of decreasing application processing workloads. The second decrease, $892,000, is made possible through on-going management and productivity improvements which are part of the Administration's continuing efforts to improve the efficiency of operations.

In summary I would like to refer to the 1989 Budget document that we have referred to the Committee for your review. As you have determined that this hearing will address matters related to the implementation of the Immigration Reform and Control Act of 1986, I will limit my comments today to those topics and offer to answer any questions related to the 1989 budget to a later, more convenient time.

Senator KENNEDY. Our final panel this morning has made the most serious and independent studies of how the legalization program is working. Doris Meissner, now associated with the Carnegie Endowment for Peace, has extensive experience in immigration issues from service with President Ford's Immigration Task Force to work in President Carter's Department of Justice, to her most recent post as Associate Commissioner of INS.

Second, David North, director of the Center of Labor and Migration Studies of the New TransCentury Foundation here in Washington. Over the years, he has been very helpful to my staff and to the committee. He served as a consultant to Father Hesburgh's Select Commission.

Finally, Arnold Jones, Senior Associate Director of the General Accounting Office, will present the findings of the recent GAO study on the implementation of the program.

Ms. Meissner, we would be glad to hear your testimony.

STATEMENT OF A PANEL CONSISTING OF DORIS MEISSNER, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE; DAVID S. NORTH, TRANSCENTURY DEVELOPMENT ASSOCIATES; AND ARNOLD P. JONES, SENIOR ASSOCIATE DIRECTOR, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

STATEMENT OF DORIS MEISSNER

Ms. MEISSNER. Thank you, Mr. Chairman. My remarks this morning are based on a report of the legalization program which I coauthored with Demetrios Papademetriou. The report is called "The Legalization Countdown: A Third Quarter Assessment," and it was done under the auspices of the Carnegie Endowment for International Peace. We released it about ten weeks ago and copies have been made available to the committee members and staff.

Our work was based on extensive interviewing in the months of December and January in all the major metropolitan areas of the country where large numbers of legalization applications are being filed.

We also included an independent analysis of the numbers of aliens likely to be eligible for the program as the Congress wrote it. That is a fairly extensive analysis and it was based on census and all other available data.

We made findings and recommendations in six key areas, and I will briefly summarize them. The first subject that we addressed was the publicity and public information effort for the legalization program. It is the area in which we found the most serious deficiencies of the program at that time that we reviewed it.

The public information lacked an emphasis on effective community outreach and it lacked strategies and tools to get specific information out to potential applicants to enable them to decide whether or not they are eligible to apply.

Now, the information campaign which began in mid-January was designed to overcome those deficiencies. The effort that we have seen in the last several months has been very impressive, but I think it is fair to say that a truly effective public information effort, involving both media and substantial community outreach, has really existed only during the last quarter of this legalization program.

The second issue with which we dealt was the regulations that governed the program. We found that the regulatory process had been an open one where a great deal of exchange had taken place between the government and interested parties.

We thought the most important thing about the regulations had been the number of changes made in the regulations since the program began. The government has demonstrated considerable flexibility, and most of that flexibility served to eliminate barriers and open up eligibility for particular groups of people.

The problem, however, with the changes has been tied to the problem of publicity. Although the changes have been salutary, until very recently they had not been effectively communicated.

We thirdly talked about the application processing system. INS has established a very efficient and effective procedure. The infrastructure of separate offices dedicated solely to legalization, of people hired specifically to do this program, and the level of commitment and involvement of senior managers in the Service all over the country have been very, very impressive.

It has made INS be accessible, it has helped to break down the traditional fear and mistrust in immigrant communities toward the immigration authorities, and it has, in fact, been quite unexpected and unprecedented for the agency and an extremely positive development.

We were critical of delays in the Service's final decisions on legalization applications, and we noted that even with the flexibility INS has demonstrated in the kinds of evidence applicants can show to prove eligibility, providing documentation in gathering together sufficient documentation to prove their case is the single most difficult problem applicants face.

Most often, it boils down to difficulties in getting employers to provide evidence of work. This is, we found, the most serious problem from the alien's point of view in coming forward.

Fourth, we looked at the immigrant assistance organizations. We felt that the type of partnership envisioned by Congress between the government and immigrant assistance organization had not developed to the degree that had been hoped.

Mutually supportive relationships have developed recently, but the QDE's and other assistance organizations simply were not able to develop a program to manage massive caseloads to meet applicants' needs during the early months of the program.

Their deficiency compared with INS' efficiency combined to establish a pattern where most aliens have bypassed the immigrant assistance organizations, at least insofar as case processing is concerned.

Where the immigrant assistance organizations have contributed in an important way is in getting out early information and, more recently, in community outreach activities.

Fifth, we presented an analysis of the number of applicants eligible for this program. We reviewed all of the available data, including the census figures and the literature that exists, and we set a range.

We believe there are between 1.8 and 2.6 million people eligible for the January 1, 1982 program, as the Congress wrote it. This is the general legalization program, for which the deadline is May 4.

In establishing our range, we did not include SAW workers, and we do not believe that SAW or IRCA's other legalization programs can be included in the numbers discussion. This is because the 1982 date is obviously a different date from that of eligibility for the SAW workers. Accordingly, the universe of eligible applicants is considerably larger if you include SAW.

Now, we know, of course, that if the range of eligible aliens is between 1.8 and 2.6 million people, even with a predictable late surge, it is very unlikely that this program will end up with more than 1.3 to 1.4 million people.

Over 70 percent of those people are from Mexico. Only four other countries are represented in amounts over 1 percent of the total numbers, and those countries are El Salvador, Haiti, Guatemala, and the Philippines.

In particular, Asians and Caribbean groups should be represented in far larger proportions than we are seeing. One explanation is that the program has been strong in the Southwest and weak in the Northeast. Thus, there is not an over-representation of Mexicans; rather, there is an under-representation of other nationality groups who should be applying for the program.

Finally, we discussed a final surge. We made a series of recommendations on what might be done to handle and encourage it. The government has in large part implemented those recommendations, and so I will not detail them any further.

The report did not take a stand on the question of extension. We discussed the pros and cons, but we felt it was premature to make a recommendation at that time. The report was issued at the 9-month point and we believed there was sufficient time for energy to be directed toward making the program work in the time that Congress had allotted rather than in arguing about extension.

Since that time, speaking now for myself only, I have, of course, continued to think about this program and the question of extending it. I have reached the view that an extension would be advisable. I have published that view this week in an article in the Christian Science Monitor, which I have made available, and I would like to close by very briefly giving you my reasoning.

Congress crafted four legalization programs in IRCA. It passed a registry program which has no deadline. It passed a Cuban-Haitian legalization program which has a deadline of next November 6. It passed a SAW worker program which has a deadline of next November 30, and it passed the general legalization program which ends in 3 weeks.

In doing that, Congress had two very important motives. The first one was altruistic, to give people who have contributed to our country a chance to legalize. The second was pragmatic, to help future immigration enforcement by decreasing the number of people that are here illegally.

If those objectives are to be accomplished, the maximum number of people eligible must apply. The way it looks now, there is likely to be shortfall of about a half a million people.

Nobody knows whether additional time will generate many more applications although it certainly will generate some more. What we do know is that a lot of things in this program have only fallen into place during the last several months. Examples include effective publicity; information about the positive changes that have been made in the program; and court rulings—there was just a decision 2 or 3 weeks ago which opens up eligibility on the "known-to-government" question. These need to be known to counteract the self-selecting out by eligible applicants.

There is no "right" period of time for this program, but as long as the Congress gave 18 months for one category of people, the SAW workers, the only reasonable course is to err on the side of inclusion and give everybody the same period of time to apply.

Thank you.

Senator KENNEDY. Thank you very much.

[Material submitted by Ms. Meissner follows:]

(EXCERPTS)

THE LEGALIZATION COUNTDOWN: A THIRD-QUARTER ASSESSMENT

by

Doris Meissner
Demetrios Papademetriou

February, 1988

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

FINDINGS AND RECOMMENDATIONS

The objective of the legalization program as established in the Immigration Control and Reform Act of 1986 (IRCA) is to have all eligible undocumented aliens be given a reasonable chance to obtain legal immigration status. The application period began on May 5, 1987 and ends on May 4, 1988.

The purpose of this third-quarter assessment is to review progress toward that goal and make recommendations for the final three months of the program. Our work is based on extensive interviewing during December and January in the seven states and major metropolitan areas that account for the overwhelming majority of applications. We have not given the Special Agricultural Worker program (SAW) the same review because the application period for it runs until December 1, 1988. We have included in the Appendix, however, a mid-term overview of that program.

We have examined the issues central to the outcome of legalization that are within the authority and reach of Immigration and Naturalization Service (INS) and the immigrant-assistance organizations involved in the program.

We believe that the legalization program requires immediate, firm policy intervention. Otherwise, a unique opportunity to bring better order to the nation's complex immigration structure will be squandered. The chance for INS and those who assist and advocate on behalf of immigrants to develop and nurture a cooperative relationship, i.e., one based on mutual respect and appreciation of each other's priorities, may be lost. The Service may also lose the benefit of a new image of efficiency, professionalism, energy, and serious commitment to its service responsibilities that has begun to take hold.

Our specific findings and recommendations fall into six key areas.

1. Public Information

Findings:

- The formal, contracted public information effort has been seriously inadequate. It has concentrated on media only and has not produced an outreach effort necessary to pierce the barriers around many undocumented communities. This represents a serious conceptual flaw in the execution of the public information mandate and a major program deficiency.

- The final publicity campaign that began in mid-January concentrates on two important objectives: (a) create the impetus to apply because time is running out; and (b) supply accurate information about who is eligible, where to get help and how to apply. This campaign is based on a clearer understanding of the requirements and is promising.

- In the absence of an effective, national information campaign with individualized local strategies, public information and outreach was left to INS field staff, churches, community organizations, and the media. The combination of their initiatives has made important contributions to the program.

- The lack of a national strategy for both media and outreach and the lack of a collaborative public-private effort have contributed to large nationality and regional variations. Mexicans have responded best to legalization, and the Southwest has become the program's showcase. Groups which are more isolated from traditional community networks and which did not benefit from special attention in the public information campaign have fared less well.

- Targets of outreach activity which have not been adequately utilized are groups and institutions immigrant communities historically trust or know. They are schools (both teachers and the children themselves who are often their families' main conduit to the majority community), churches, community organizations, unions, employers, and ethnic leaders.

Recommendations:

- A public-private partnership in an aggressive, broad-based public information campaign must be the first priority of all actors at this time. To do this, INS must tap the best available expertise for reaching ethnic communities where application rates have been unacceptable by any measure. Local efforts to reach isolated groups should be encouraged and funded.

- Additional funding and expert assistance should be provided for the campaign the Justice Group has designed to deepen its reach, particularly in targetting specific nationalities.

- Particular effort must be directed at those who have selected themselves out of the program on the basis of incomplete or inaccurate information. People should be urged to seek advice from immigrant-assistance organizations especially if they (a) have ineligible family members, (b) need proof from employers, or (c) have significant employment or other eligibility gaps. The confidentiality protections of IRCA must be heavily promoted with employers who may be the only source of documentation for many eligible aliens.

2. Regulatory Policy

Findings:

- The regulations published in May resulted from an open process designed to achieve maximum participation and exchange of views. Since the application period began, INS has made important adjustments, modifications and clarifications to the regulations. With some exceptions, they have resulted in removing unnecessary barriers to eligibility. However, these changes have not been effectively communicated.

- The policy on ineligible family members will not by itself make the difference between success or failure in the legalization program. It will, however, deter some eligible applicants from filing. Many who have ineligible relatives are applying and more will do so if the publicity planned on this point is effective, and applicants seek advice from assistance agencies.

- Congress should have addressed the family question. However, INS has traditionally treated family cases generously. The INS position on ineligible family members in this program creates the appearance of insensitivity and is the weak link in INS' otherwise successful effort to transform its public image.

Recommendation:

- INS should send a clear signal that it intends to treat ineligible family members as deserving of sympathetic treatment, though ineligible for legalization, on a case-by-case basis. This would legitimize at the national level the practice that is actually taking place in the field.

3. Application Processing

Findings:

- INS has established an efficient infrastructure and an attractive atmosphere in the Legalization Offices (LO's) for processing applications. Interviewing officers and LO managers are courteous and helpful. The LO concept has created a positive, new public image of INS.

- It has taken too long for INS and assistance organizations to reach a common understanding on documentation requirements for cases. Uncertainty persists because assistance organizations are not advised of final decisions and there continue to be inconsistencies among interviewing officers and LO's.

- Because legalization costs must be made up through application fees, the legalization program is driven by cash flow considerations to a degree which could interfere with the success of the program. With applications currently at only 30 to 40 percent of the break-even point, INS may face unpalatable choices. The most dangerous is severe reductions in staffing levels at LO's, especially in many areas in the Eastern United States.

- Until recently, final decisions from the regional processing facilities (RPF's) have been unduly slow. The lack of timely decisions has had three important negative consequences: (a) uncertainty among field staff regarding case preparation remains unresolved; (b) denial decisions will appear in waves making the 30-day period to submit appeals unworkable for legal assistance groups and Qualified Designated Entities (QDEs), and (c) feedback to applicant communities is insufficient to generate new, additional applications from those who are wary even though the 97% approval rate is an extraordinary validation of the application process.

Recommendations:

- Timely final decisions must be the Service's highest operational priority. Good news creates momentum and generates additional applications. Applications filed through November should be decided by the end of February.

- The 30-day time limit for filing appeals should be expanded or extensions of time should routinely be permitted. The challenge for the legal community is still ahead. It must make every effort to organize a system of pro bono legal resources to assist applicants where appeals are required.

- Congress and the Administration must be willing to support sufficient resource levels for INS to ensure that the LO system remains capable of handling a substantial last quarter surge in applications.

4. Immigrant-Assistance Organizations

Findings:

- The partnership envisioned by Congress to assist applicant communities is only now being effectively built. Relationships and cooperation are good in many locations, but national alliances have been strained by mutual mistrust and suspicion.

- Confusion, lack of resources, and a casework or legalistic approach to the legalization program characterized the early program performance of many QDE's. Discouraged by long lines and cumbersome procedures, applicants were encouraged to file directly with INS because of its efficiency, accessibility and publicity campaign, which specifically excluded references to QDE's.

- A broad network of organizations at local levels are involved in legalization though many did not seek status as QDE's because of the government's cost requirements or because they believed their credibility would be undermined by a formal association with INS. QDE's entering immigration assistance through legalization have been quite successful. They adapted to the application process INS established more effectively than did the traditional immigrant-assistance community. That community has been hampered by extremely limited resources and an inability to draw a clear demarcation line between advocacy and assistance. As a result, it has assisted only a minority of all applicants and has been unable to penetrate isolated applicant communities that seriously need its services, notwithstanding an extraordinary effort.

- Legalization has placed an enormous strain on the resources of all traditional immigrant-assistance organizations. About 20 percent of them have withdrawn from the program and many more may follow. Yet, it is now that the QDE role is most crucial. They are being called to develop a new partnership with INS which was, until recently, willing to bypass them in order to guarantee a rate of applications that would recover program costs.

- In most places, about half of the applicants have had formal assistance from either a QDE, an attorney, a notary or a local non-profit organization. Most other applicants have received informal help from neighbors, church members, landlords, teachers, employers and others. Where such help is not available, the program has suffered. The unexpectedly low level of legalization applicants utilizing QDE's has been used by INS to gloss over the very real need for assistance in applying for legalization.

Recommendations:

- QDE's and other assistance organizations should receive as much support as possible so that they maintain operations during the final wave of applications. Their names and services should be prominently featured in all information activities and they should be advised of case decisions so they can assist with appeals.

- Assistance organizations should tailor their operations to produce acceptable, not perfect, cases.

- A more elastic reimbursement or QDE fee structure should be allowed during the final quarter. QDE's are handling the more difficult, time-consuming cases. They may not otherwise be able to bear the cost burden that is being asked of them. In addition, they should be reimbursed for ongoing and new outreach efforts.

5. Numbers of Applicants

Findings:

- The range of persons likely to be eligible for legalization under the general legalization program enacted by Congress is between 1.8 and 2.6 million. Of them, an unknown but probably small proportion are statutorily or regulatorily disqualified.

- The critical data necessary for policy decisions have not been available. Yet, there has been a peculiar but consistent failure by INS to incorporate the data that are available in the planning of the legalization program.

- Mexican nationals have submitted over 70 percent of legalization applications. Salvadorans are a distant second. Program participation is quite high in California and Texas but has lagged enormously in the Northeast. Asians are surprisingly underrepresented among applicants, as are some European groups which had been expected to contribute substantial contingents. Caribbean and Latin American nationals are also far fewer than most observers expected.

- By January 7, 1988, 922,000 persons had applied. There are sizeable groups of eligible applicants who have not come forward. A significant last quarter surge is likely only if aggressive, coordinated steps are taken along the lines we have identified. Even if such steps are successful, however, only a part of the shortfall will be captured.

Recommendation:

- Program success should not be judged solely by numbers. SAW applications should not be counted in reporting the legalization tally.

6. A Final Surge

Finding:

- There is likely to be a surge of applications in the weeks before May 4. If the information campaign is successful and the public-private partnership takes hold, the surge could be substantial and require special arrangements.

Recommendations:

- INS can afford to relax procedural requirements during the final weeks to assure that all who wish to apply can do so. Offices should remain open late into the evenings and on weekends. Policies should be flexible on what constitutes an application. Applicants should be allowed to file a skeletal application before the deadline and supply additional information and material later. During the final days, applicants should be allowed simply to state their intent to file by registering with a QDE or an LO.

- INS should allow the application fee to be paid when the temporary residence card is ready to ease the cost burden of legalization on applicants during the final stage.

- Where only incomplete documentation is available but the applicant's account is credible, INS should allow for affidavits to be personally sworn at LO's to overcome significant gaps.

- So they may help applicants until the final day, non-QDE assistance organizations should arrange to submit applications received by May 4 through a QDE to take advantage of the 60-day, post-May 4 window allowed for QDE's.

- QDE's and INS should work closely and cooperatively after the May 4 deadline and extend the 60-day window if QDE's have applications that have not been completed.

Conclusion

The start-up knowledge and experience required to do legalization took more time than anticipated, but the program has begun to work. If the public information plans and public-private partnership now forming are effective, the case for extension is not compelling.

Between 1.3 and 1.4 million applications are likely to be filed by May 4. This is a shortfall of 300,000 to 400,000 from our most conservative estimate of the eligible population. Thus, the question becomes the degree of effort and level of expenditure the nation should make to reach those additional potential applicants. It is unlikely that the legalization program can reach the number theoretically eligible because of its inherent limitations. The documentation requirements, ineligibility of family members and distant cut-off date pose severe constraints. Even if an additional 300,000 to 400,000 applicants could be reached, the size of the remaining illegal population in the country would be almost twice the number who would have been legalized. Congress' stated objective of mandating legalization to enhance future immigration enforcement cannot be achieved through the program it enacted.

Senator KENNEDY. Mr. North.

STATEMENT OF DAVID S. NORTH

Mr. NORTH. Thank you, Mr. Chairman. Before I talk about the study that my colleague, Anna Mary Portz, and I wrote, I would like to say one sentence about Senator Chiles' proposal and one sentence about Senator Exon's, if that is acceptable.

The point about Senator Chiles' proposal is a small one and I do not think need be handled with a statute, but if felons from an adjacent country—and we have exactly two of them, Canada and Mexico—are to be returned to their home country, my recommendation would be that we change the current system, and the current system is simply to take the person who has come out of a California jail, for instance, and take them down to the border at Tijuana.

I would suggest that if they have, in fact, lived in the interior of Mexico, if their home town is down near the Guatemala border, for instance, that they be sent back at U.S. Government expense to their home town and not simply dumped on the other side of the border.

As far as Senator Exon's concern, there seemed to be an all-embracing approach to any kind of benefit for any kind of illegal alien. I would suggest a more nuanced approach.

I would suggest that there should be a three-way distribution because there are three quite different kinds of programs, all of which some illegal aliens have been involved in.

First, there are the kinds of programs that are funded by the workers' contributions themselves. I am thinking primarily of Social Security where the payment of a pension is probably appropriate public policy. We did take some of their money over a period of years.

The second kind of programs are health programs. In these instances—there are many kinds of health programs, but in most of these instances I think it is both humane and sound public health policy to provide some kind of treatment to everyone in this country, no matter why they are here. If somebody has a contagious disease or a broken leg, you do not want to turn them away.

Finally, there is a third class of program, and these are the tax-supported programs that do provide cash to illegal aliens, probably not to the extent that the Senator is worried about, but there are such programs. SAVE is addressed to that, and I think Senator Exon's attention should be addressed only to that third group.

The study that brought me here today, I gather, is called "Through the Maze." It is an interim report on the alien legalization program. It was funded by the Ford Foundation. We have also done some work for the Administrative Conference of the United States.

This report was written by my colleague, Anna Mary Portz, and I. Anna Mary is here in the room with us, and we deliberately, knowing what Doris and Demetri had written, looked at the program. We agreed with them on many, many points, but focused our attention in somewhat different directions and we come up with somewhat different numbers.

We count six separate paths to legalization currently in being, five of them created through IRCA and the more recent one for people from four different countries who have had extended voluntary departure.

These are very confusing programs. They are difficult for the applicants to understand and they are difficult for the government to administer; we agree with the Doris and Demetri that the government has made a herculean effort to administer these programs fairly and vigorously.

However, we are only going to talk about two of these programs today, the principal program which we call LAW and the special agricultural program which we call SAW. We want to make the point that these programs have been consistently liberalized over the period of time and some of them may be additional liberalizations between now and May 4.

This is a good thing, but it does cause a much shorter window for the person who is the recipient of those liberalizations. They do not have the 365 days, they do not have the year and a half.

Cotton workers were recently added to the SAW program. Changes have been made about foreign students. Those people do not have the full year or year and a half to apply, and we think that that is one argument for extending the deadline. INS understandably resists that and suggests that they should not be penalized for their own liberalizations.

We make the point also that despite vigorous private and, more recently, public efforts to minimize confusion and maximize applications, there probably are 600,000 to 800,000 more aliens eligible for the LAW program than those that have applied to the date of our research, which ended a couple of weeks ago.

Many eligibles appear to self-select out of the process. The Commissioner is right. Virtually everybody we talked to knew about the program and knew about the deadline, but many of them had major misunderstandings about their own eligibility and many of them had decided not to pursue claims on essentially fallacious grounds. The problem of selecting out is very much with us and hopefully an extension could lead to some lack of confusion.

We find that the principal legalization program, LAW, has been used more extensively proportionately than anticipated by some populations and less extensively proportionately by others.

This is not your typical east coast, upper middle class—women and children first program. It does not look like that at all. The people who are coming forward in larger numbers than one might anticipate are Mexican nationals, men, those who entered without inspection as opposed to visa abusers, blue collar workers, and the residents of California.

If you turn each one of those terms around and you talk about visa abusers as opposed to EWI's and you talk about New Yorkers as opposed to Californians, you find that the response to the program is considerably less than one could anticipate by looking at the census data of 1980 and the distribution of the illegal population worked out by the census at that time.

We think that there needs to be more effort on these other groups that are not coming forward briskly. We think the government needs to spend more energy reaching more difficult-to-reach populations.

Whereas most of the illegal aliens in Los Angeles speak one of two languages, English or Spanish—you can talk to them in either of those languages or both those languages—that just simply is not true in New York and Boston where many, many other languages are needed to reach smaller clusters of people.

While we find that the LAW program is undersubscribed, we find that the SAW program is fully, if not oversubscribed. When one measures the response to the SAW program against estimates of the number of farm workers with serious ties to agricultural work in California, one finds a very large number of SAW's. The SAW program is clearly different in the sense that it is subject to much more fraud than the LAW program.

Finally, SAW is a very different program than the LAW program, permitting application-filing in other nations. You cannot do that in the main-line program. You cannot apply at the border, as you can in the SAW program.

If you come forward and you are a male between the ages of 18 and 25 in the LAW program, you have to register with the draft. We do not ask that of the farm workers. The people who come forward in the mainstream program must make some efforts over time to learn some English and learn something about civics. That is not true for the farm workers. The farm workers do not need to learn any English; they do not need to learn anything about our government. With this in mind, we suggest no change in the deadlines in the SAW program.

We also found that these programs are expensive, not only $185 per head for the adults applying, which INS rounds out to $420 for a family, but there are other costs as well.

The medical program is expensive and if one does go to a QDE or a lawyer, that costs money, too. A finite number of people are having real trouble pulling together that much money and there are a lot of applications in various offices around the country that are just ready to be filed once the check shows up.

Finally, we found that INS has devoted enormous energies and creativity to the legalization program. It has established an attractive new network of 100 very attractive offices. It has run a largely upbeat program. We found joy in the legalization offices, we found joy in the staffs of the legalization offices, we found a lot of creativity in the managers, and we were very impressed by that.

Nevertheless, because of the complications of the program and because of the late-blooming public relations program and the fact that many applicants are only newly, recently eligible for the program, in fact, we suggest that the program be extended to November 30.

We suspect also that the Congress of the United States is not likely to pass such a program again for a number of years and we would like to make sure that this program goes as well as possible, and therefore we recommend that extension.

We also suggest during that extension a couple of other program modifications, and I will only deal with two of them here. We think there ought to be more time and energy spent on the detection of fraud, particularly in the SAW program.

We think that there should be more time and attention by the Immigration Service and State and local government paid to the prosecution of the unscrupulous operators who exploit legalization applicants, the sharks swimming around on the periphery of this program.

Finally, we would hope that both the voluntary agencies and the Immigration and Naturalization Service could do what they can to minimize the inevitable areas of controversy in such a program.

I thank you for giving me an opportunity to talk about it.

Senator KENNEDY. Thank you very much.

[Prepared statement, along with questions and answers, follow:]

Summary of the Testimony of

David S. North, TransCentury Development Associates

Before the

U.S. Senate Immigration Subcommittee

April 14, 1988

The principal findings of our study on the alien legalization programs established by the Immigration Reform and Control Act of 1986 (IRCA) are six in number:

1. The programs are complex (there are now six separate paths to legalization, five IRCA-created) and they are difficult for applicants to understand and for the Government to administer. We will discuss only two of them today, the Special Agricultural Worker (or SAWs) program, for those who have done the right kind of farm work for at least ninety days, and the the principal program for aliens illegally in the country more or less continuously since January 1, 1982, which we call the LAWs program. The programs have been consistently liberalized by INS, and the denial rates are low (less than one per cent of the LAWs applicants have been denied, and about seven percent of the SAWs applications decided so far have been rejected.)

2. Despite vigorous private, and more recently, public efforts to minimize confusion and maximise applications, there probably are 600,000 to 800,000 more aliens eligible for the LAWs program than have applied to date. Many eligibles appear to select out of the process.

3. The principal legalization program has been used more extensively (proportionately) than anticipated by some populations, such as Mexican Nationals, men, those entering without inspection, by blue collar workers and by residents of California. We feel that more time is needed to reach these other, not yet-responsive populations, who live in smaller clusters than those groups who have responded to the program. These populations, with their many languages, are harder to reach than, say, Mexican Nationals in Southern California, all of whom understand either Spanish or English.

4. While the LAWs program is undersubscribed, the SAWs program is fully, if not-over-subscribed. When one measures the response to the SAWs program against estimates of the number of farmworkers with serious ties to agricultural work in California, one finds a very large number of SAWs. The SAWs program is also clearly subject to much more fraud than the LAWs program. Finally, the SAWs program is a very different program than the LAWs program, permitting application-filing in other nations and at the border (not the case in LAWs), and demanding no learning

of English, no registration for a possible draft, and minimal continuing residence in the States.

5. These programs are expensive to applicants, often involving payments of more than $1200 for a family of four, and much more if a lawyer is used. Applicant fees support the program and some applications are delayed while the needed money is collected.

6. INS has devoted enormous energies to the legalization program, and has established an attractive new network of more than 100 offices, and has run a largely up-beat program.

Because of the slow start of the program generally, the late-blooming public relations program, and the fact that many applicants (admitted to the fold by recent changes in INS regulations) have had only a limited time to apply, we recommend the following:

1. An extension of the LAWs program deadline from May 4, 1988 to November 30, 1988. The latter date has been selected because it is the deadline for filing SAWs applications.

2. No extension or other liberalization of the SAWs program.

3. A series of other program modifications, such as:

- spending more public relations attention on the non-West-Coast, non-Mexican National populations among the eligibles;
- devoting more attention to the detection of fraud;
- providing more attention, within INS and at the state and local level, to the prosecution of the unscrupulous operators who exploit legalization applicants;
- and seeking to minimize the inevitable areas of controversy in such a program.

The basic support for this research, conducted by Mr. North and Anna Mary Portz, was a grant from the Ford Foundation while additional support was provided by the Administrative Conference of the United States. The findings and the recommendations are those of the authors, and do not necessarily reflect the views of either the Ford Foundation or the Administrative Conference.

(EXCERPTS)

THROUGH THE MAZE

An Interim Report on the Alien Legalization Program

By David S. North and
Anna Mary Portz

EXECUTIVE SUMMARY

This report is an analysis of the operations of the alien legalization programs set in motion by the Immigration Reform and Control Act of 1986. Most illegal aliens in the country since January 1, 1982, may apply for legalization until May 4, 1988; other illegal aliens who have done 90 or more days of the appropriate kind of farmwork may apply until Nov. 30, 1988. Successful applicants are on the road to permanent resident alien, and later, citizen status.

The principal findings:

I. The programs are complex -- difficult for the government to administer and for the applicants to understand. The Immigration and Naturalization Service (INS) to its credit has almost continuously liberalized the program. The denial rate is low.

II. Despite vigorous public and private efforts to minimize confusion and maximize applications, there probably are at least 600,000 to 800,000 or more aliens eligible for the principal legalization program who have not applied by March, 1988. Many eligibles appear to "self-select out" of the program.

III. The principal legalization program is used by some parts of the illegal alien population more than others; men, Mexican Nationals, those who entered the country without inspection (EWIs) and blue collar workers are heavily represented in the program, and probably over-represented. Middle class and East Coast applicants are under-represented.

IV. The Special Agricultural Worker (SAW) program, unlike the principal program, has been more successful than one might expect. It is much easier for a worker to secure legal status through this program than through the principal program, and requires much less contact with the U.S. in the past, and in the future, than the principal program. Fraud is more of a problem with SAWs than in the other legalization programs.

V. These programs are expensive for applicants, often involving payments of more than $1200 for a family of four; applicant fees support the operations of the programs.

VI. INS has devoted enormous energies to legalization, has established an attractive new network of more than 100 Legalization Offices, and has run a largely up-beat program.

The Recommendations:

1. Because of the short-fall of applicants, the fact that many applicants (admitted to the fold by recent changes in INS regulations) have not been eligible for the full year, and because of a late-blooming public information program, we recommend that the principal program be extended through November 30, 1988, and that there be no change in the SAW program, which is scheduled to expire on the same date. Such a change will take an Act of Congress.

2. We also recommend that a number of specific steps be taken, during the program's extra months to increase its effectiveness:

a. More attention should be paid to the smaller, more scattered, non-Mexican eligible populations.

b. More attention should be paid to those eligibles who appear to select themselves out of the program.

c. More effort should be made to limit the inevitable areas of controversy between INS and the immigrant-serving agencies.

d. The currently drab INS announcement of an applicant's approval should be recast to encourage others to apply.

e. An extension will, of necessity, increase the Government's costs; the program should, in the future, be financed by a mix of fees and tax funds.

f. There are unscrupulous operators exploiting legalization applicants; more should be done to discourage their activities.

g. Similarly, more should be done to discourage applicant fraud, particularly in the SAW Program.

h. Private and governmental agencies, not now involved in the program, should be encouraged to assist it.

i. INS should do more to encourage employers to provide work records for applicants.

j. There will, presumably, not be a need for any additional extension.

OUR RECOMMENDATIONS

The basic themes, throughout this report, have been:

- the legalization program is not a stationary, lifeless object, it is organic, growing, and changing. It is more outgoing, more relaxed, more assertive in its outreach now than it was in the summer of 1987. To its credit, INS has made the program available to more people, has eased its procedures and increased its public education program as time has passed.

- a substantial number of eligible, potential applicants, however, have not yet applied for the program, and many of these will probably not do so between now and May 4, 1988. Many, out of fear or misinformation, have selected themselves out of the program.

It is possible of course that without an extension, there will be a last minute surge of applicants as there was in the Canadian program. Fully 10% of those applications were filed on the last day, but that was a 60-day program not a 365-day one.

Many of the INS changes, have come late in the game, perhaps too late to produce the desired effects. Last-minute changes do not effect many of the dynamics of the process. The relatively slow delivery of the TRA cards to the applicants, for example, has denied the program the stimulus of momentum which would have been very helpful.

We doubt that the Congress is going to pass another legalization program, not in this generation, and it is important that this legalization be done as well as possible.

With these thoughts in mind we have one major, and several minor recommendations:

1. Extend the principal legalization program (for LAWs) to November 30, 1988.

We are suggesting no changes in the terms and conditions, not that good arguments could not be made on behalf, for instance, of a Congressional unravelling of the "known to the Government" problem. Anything other than a straight extension will attract multiple amendments and controversies, and these will endanger the extension.

We are also suggesting no changes in the SAW program, on the grounds that it is liberal enough already, it is abused enough already, and it is providing Western growers with very large numbers of newly-legal workers.

Extending the deadline to Nov. 30 will not only give people more time to apply (and, we are sure, increase the number of applications), it will also give them more time to save the money needed to pay the fees, and will eliminate one of the inequities in the program, the longer filing period for the SAWs than for the LAWs.[66]

2. Other recommendations.

With an additional six months of program duration, INS will be able to devote additional time and energy to several matters which are still evolving.

2.a. More attention to Non-Mexican Populations.

INS should reach out to the leadership of, and scholars and lawyers and social workers in, some of the ethnic communities which have not been responding very much to the legalization program, to ask why this has been the case, and to devise strategies to increase participation. Leaders of groups which have worked hard on legalization (Mexican-Americans, Poles, and the operators of the ALFA program) might be enlisted in these meetings for cross-ethnic policy and program discussions. The QDEs could, and should, play a major role in these outreach efforts.

2.b. More attention to the eligibles who self-select out or were inadvertently pre-screened out.

Many apparently eligible applicants decide for themselves that they are not eligible for the program; others were initially told that they were not eligible. One public information message should encourage potential applicants to come to LOs and QDEs to secure a "second opinion" on their own cases. INS' recent, highly specific campaigns directly to this audience should be expanded.

2.c. More effort should be made to limit areas of controversy.

It would be helpful if INS could work out an agreement with the QDEs, as it did with the growers on applicants at the border, regarding the family question. We sense that the two sides are not that far apart on the substance, as opposed to the rhetoric, of the issue. Similarly a speedy resolution of "known to the Government," perhaps an expedited hearing on Ayuda, Inc. v. Meese would be helpful.[67]

---

[66] While the Meissner-Papademetriou Report, which was written a couple of months earlier than this one, came to many of the same conclusions as this report, it should be noted that its authors did not recommend an extension.

2.d. The INS approval letter should be rewritten.

The new version should urge the recipient to encourage eligibles in family and neighborhood to apply as well. Though a small matter in itself, this would improve upon the letter which INS has recently decided to send to all TRA recepients.

2.e. An extension will increase the Government's costs.

It is time to use a mixture of fees and tax funds to run the last part of this program.

2.f. More attention should be paid to consumer protection for applicants.

Many SAW applicants experience extortion from farm labor contractors, and many other applicants are swindled by immigration consultants and others. Some useful efforts have been made by local and state officials in Illinois, California and Texas on this matter. These should be encouraged and INS should take more steps of its own towards similar ends.

2.g. More wide-spread attention should be paid to the detection of fraud, notably in the SAW program.

INS might find it useful to expand its examination of patterns in applications, even those filed by plausible applicants, to see if certain suspect practices are used widely.

2.h. Private and public sector entities, other than INS and the QDEs, should be encouraged to devote more resources to the legalization program.

It would be helpful if other units of government, at the federal, state and local level, helped promote the program; ongoing private sector financial assistance to low-income applicants should be expanded.

2.i. INS could do more to encourage employers to provide work records for applicants.

In situations in which an applicant needs, but can not secure, a proof of work to complete an application, INS should be encouraged to write to the employer seeking his cooperation, and informing him of the confidentiality of such information.

2.j. An extension to November 30, combined with efforts along the lines outlined above should obviate any need for any further extension.

---

[67] "Two New Legalization Lawsuits Filed" Interpreter Releases, March 14, 1988, pp. 232-233.

Replies to Questions Asked of David North
By Senator Edward M. Kennedy
Following Immigration and Refugee Affairs Subcommittee
Hearing on April 14, 1988

Question # 1: No doubt, there are a number of lessons from the amnesty program which could be fruitfully applied to other ongoing INS programs. You spoke already of some of the lessons for continuing public education and outreach. Are there other lessons, for example, as regards adjudications or naturalization?

Reply: The principal lesson, I feel, is that the entire mood or ambience of a program providing benefits to qualified aliens can be shaped in very positive manner, as we have seen in the legalization program. One hopes that this environment can be carried over to, for instance, the naturalization program which I have previously studied.

Similarly, the information material made available for the legalization program -- although perhaps a little slow in arriving -- represents a considerable improvement on that traditionally available in other INS programs. (The computer-driver correspondence of INS, however, in both the legalization and naturalization programs, is neither warmly written nor attractively presented.)

One final point: in the legalization program INS has confronted the question of the educational level and the linquistic abilities of the applicant population. Much of the material is written simply and clearly. One would hope that this style becomes the standard at the agency.

Question # 2: You note in your report that the agricultural legalization has been surprisingly successful in producing applicants, in comparison with the regular amnesty.

How does the turnout for the agricultural amnesty compare with the overall farm labor needs? Will growers need more foreign agricultural workers?

Reply: We have reviewed more recent application data and the trends we reported to the Senate have been, if anything, strengthened in the intervening period.

Between March 4 and April 21 the number of main-line legalization applicants has increased from 1,041,000 to 1,234,000 for an increase of 193,000 or 18.5%. In the same time period the number of SAW applications has increased from 302,000 to 425,000, or 113,000 or 37.5% We are concerned about the equities of this situation, the far-easier path to legalization awaiting farmworkers than others. We worry about the different set of standards applied to these two groups of legalization applicants: SAW farmworkers need not spend much time in the country to retain their green cards, they need not learn about our government or the English language, they do not have to register for the draft, unlike the rules laid down for the mainline legalization applicants.

You ask how does the turnout for the SAW program compare with overall farm labor needs? I suggested in my report, before the latest influx of applicants, that the number of SAWs in California looked like it was in excess of other measures of the size of the serious seasonal farmwork force, (in other words, people who spend several months a year doing hand work in farming.) The number of applicants nationwide is already well above the estimates of the Congressional Budget Office, and the program has seven months to run!

How does this compare to farm labor needs? Farm labor needs are not fixed like the height of the Washington Monument -- growers can mechanize or not, weed fields or not, harvest the last apple or orange at the top of the tree or not; these decisions are routine economic ones, and there are no God-given answers regarding farm labor needs. Further, the supply of farmworkers is not fixed, either; it varies primarily on the wages and working conditions offered by growers, and, to a lesser extent, by government policy. The principal questions should be stated differently -- is the fruit and vegetable industry making the efforts necessary to retain the workers already in the farm labor force? Is it trying to make wages and working conditions competitive? Or is it permitting such a rapid laborforce turnover that it always has to come to Congress for relief from its own practices?

The combination of delayed employer sanctions, the end of open-field enforcement of the immigration act, and at least 415,000 SAWS (and probably hundreds of thousands more) suggests that the basic problem, at least this year, will surpluses of farmworkers not shortages.

Replies to Questions Asked of David S. North
By Senator Alan K. Simpson
Following the Immigration and Refugee Affairs Subcommittee
Hearing on April 14, 1988

Prior to replying to the four questions posed in writing by the Senator, Mr. North requested that he be allowed to amplify his testimony before the Committee by making the following additional statement:

You asked, Senator Simpson, if anyone had any really solid evidence to support the position that there would be an appreciable number of additional applicants for legalization should the deadline for legalization be extended. While predictions about future human behavior are always chancey, particularly when one is answering a "what would happen if..." question, I think there are two strains of evidence suggesting that many more people would come forward if the deadline were extended.

The first is a comparison between the apparent number of eligibles and the number of applicants, which suggests that at least 600,000 to 800,000 eligibles had not applied when we wrote our report in late March –– a comparison discussed further below.

The second is a series of six small surveys which we conducted in four cities in February –– straws in the wind to be sure –– which indicated that for every two eligibles who had applied there was another who had not applied; many of those who had not yet applied may apply before May 4, others, we suggest are more likely to apply if they more time and if the Immigration Service has more time to bring to bear its increasingly sophisticated public education program on that population.

Question # 1: In Venezuela, where only about one-fourth of the illegal aliens took advantage of the legalization program (350,000 of the estimated 1.2 million) it was learned that many if not most, of the undocumented workers from neighboring Columbia did not care to legalize and cut ties with their native land. Have you in your studies considered whether this attitude may be a possible explanation for fewer applicants in this country than some now claim they expected?

Reply: Yes, this is clearly a factor, but given the attractions of this country, not a major one. It works in two ways: (1) some people who might have been eligible did not apply because they do not live here any more. They have either gone home or migrated on to a third country. We suggest that this pattern may be more significant in the North and East and that this may help explain the relatively light response to legalization in those regions. (2) Other eligibles who are now resident in the country have decided not to apply because they plan to leave shortly: we encountered three such persons in our previously described set of 330 interviews.

Question # 2. You warned in your comparative report on other countries' legalization programs that "no one would be fully satisfied with the `effectiveness' of legalization if effectiveness is measured as the probable proportion of the undocumented aliens who benefitted." Isn't this precisely what we are now doing -- judging the effectiveness by the proportion of estimated illegals who have applied?

Reply: It is always pleasant to be quoted by a U.S. Senator even when the purpose is to cast shadows over one's current position. Yes, that is one of the standards, but only one of the standards we are using to suggest that an extension is warranted. Despite INS' best efforts this has been a slow-starting, complex, constantly changing program, and we think it needs a little more time to reach the population identified by Congress as its targets. Given the unlikelihood that an alien legalization program will be voted again in our time we think it important that Congress and INS go the extra mile to make this one work as well as it can.

Question # 3. Does the Immigration Service presently provide sufficent funds to its research/statistics division to respond to reports required of INS by the Immigration Reform and Control Act? If funding is not sufficient, what additional resources might be necessary?

Reply: As you may or may not know, while INS has a couple of dozen people processing statistics, there is no research budget per se and there never has been one. That an agency making decisions about millions of people, employing more than ten thousand people and spending hundreds of millions of dollars has no such operation may come as a surprise. Correcting this situation should not be terribly expensive.

INS needs two or three research analysts and a budget of three-quarters of a million dollars or so to begin to provide useful data for the various pressing policy questions in this field. Some of the specifics that should be examined are covered later in my reply but before dealing with some of those longer-term issues let me stress two pressing problems dealing with INS' ability to respond to the reporting requirements of IRCA.

First, for reasons that I do not totally understand, INS feels that it can not use Social Security Numbers of the newly legalized to secure group data on the economic progress over the years of this population. No privacy rights are threatened, but because of a peculiar legal interpretartion, perhaps made outside the Service, this extremely valuable data source will not be used unless Congress helps break this deadlock. Congress could remedy this problem by adding a third legitimate use of data supplied by legalization applicants: "to collect group data in connection with reports mandated under this act." This could be inserted into Section 210 (b) (6) (A) for the SAW program, and in the comparable section of the principal legalization program.

There is a long and honorable history of using social security group earnings data to provide longitudinal data on the economic progress of various segments of the American work force. To my knowledge -- and I have conducted three such studies -- there never has been a whisper of complaint about privacy problems in this connection. No significant financial costs flow from this suggestion.

The second urgent problem is this. INS decided to secure only limited social and economic data on the applications for legalization on the grounds that it would conduct a survey of the newly legalized. That survey was supposed to provide much of the basic information on the lives of, and impacts on society of, the million-plus people who are going through the principal legalization program.

As you may or may not know, a year-and-a-half after the passage of the law, that survey is not yet operating. The study was both commissioned and designed and is now stalled for three reasons:

I. The people planning the survey have been told that they can not use data from legalization files to draw a scientific sample of those who have become legalized. My suggestion above about a technical change in IRCA would take care of that problem.

II. OMB has not cleared the survey design.

III. Funding, in the neighborhood of $1,700,000 has not been secured.

This survey is designed to secure detailed information on the people who have been accepted as temporary resident aliens, and will cover their demographic characteristics, their geographic distribution, their past immigration history (both legal and illegal), their labor market experiences (before and after legalization) and their use of social service agencies. As for an opinion on the utility of this proposed survey, I suggest that you ask other as well, as I am slated to play a minor role as a consultant to the organization running it.

In addition to a modest research budget, and the solution of the two narrow issues related to directly to the legalization program, INS continues to need somewhat greater resources to capture vital, policy-related immigration data and to analyse the data that it does gather.

On the computerization of data now resting quietly in INS paper files, let me suggest just two areas in which more policy-relevent information is needed:

First, there are the more than half-a-million petitions for immigrants (I-130) filed each year, that are not now keyed in to the INS computers. These filings tell us -- usually months to years in advance -- where the demand for immigrant visas comes from within our country, whose presence is requested, and how long they will have to wait (if found eligible) before a visa will be issued to them. Whereas it would clearly be useful to key all of them, it would be helpful simply to regularly secure data from a large sample of them.

Secondly, as a largely hidden by-product of IRCA, the number of Green card holders who will be allowed, legally, to live in Mexico or Canada most of the year, will increase from something like 50,000 - 75,000, the curent number of greencard commuters, to as many as half a million -- depending on the extent to which SAWs choose to remain residents of their home nation. It would be helpful to know more about their movements through our ports of entry -- and what they do in the U.S. labor market, and how they are interacting with the social security system -- but to my knowledge no plans exist to capture data on this group as a class or to analyze it.

One could elaborate further on how more data captured, and then pondered, would help INS and the Congress know more about the impact of sanctions, the impact of the marriage fraud legislation and the like, but these samples will suffice.

In addition to capturing data, however, INS needs to spend more time thinking through the best possible uses of the data that INS captures or should capture. Let me offer one mild suggestion, based on the graphics that Commissioner Nelson showed the Committee during the hearing.

He had -- as INS has had for years -- a chart showing the changes in Border Patrol apprehensions in the Border Patrol

Sectors along the U.S.-Mexico border; they declined in the first nine months of IRCA, and have moved up a bit since (at least relative to 1987).

The problem with this data series, and some others used by INS, is they are needlessly crude. A drop in Border Patrol apprehensions may mean:

(a) fewer agents are available, or

(b) agents are being used in a less cost-effective way, or

(c) the numbers of would-be crossers has decreased.

A far better measuring technique -- one that I have used for years and the General Accounting Office has begun to use -- simply takes advantage of other INS data series, ignored in the graphics shown to the Committee. INS knows the number of hours of agent time spent in each enforcement activity in every unit; one can easily measure the number of apprehensions per officer work-shift. Further, if officers are taken away from their most productive apprehension activity -- visiting farms and ranches -- the number of apprehensions will decrease. (Congress all but outlawed farm and ranch checks because of the provison in IRCA demanding warrants for such activities, the so-called open fields provision.)

If, however, one measures the number of apprehensions right at the border (the INS term for these is linewatch apprehensions) and measures the number of workshifts of agents on linewatch, one gets a much better idea of the extent to which the illicit flows are taking place. What I would suggest is that INS regularly report to the Congress on the number of linewatch apprehensions per officer workshift -- this would give us all a sound measure of whether or not illicit border traffic is increasing or decreasing. (The general notion is that, all else held equal, there will be more apprehensions when there is more illegal traffic, and vice-versa.)

If INS had, in addition to a modest research budget, another quarter of a million dollars a year or so for the proposed data entries and for examining the best use of its own existing data systems we all could know more about what is happening in the immigration field.

Question #4. What uses would be served by a reinstitution of the alien registration requierment? Would the benefits gained justify the likely cost of registration?

The benefits would be substantial and would be well worth the cost. Some of the benefits would be quite general, many other would be quite specific. Let me provide a few samples of each.

Generally, the annual collection of data from the aliens would provide us a better idea of where aliens settle in the U.S. and a much better picture of where they move after they first settle. It would provide us with annual information about their employment patterns and their rate of unemployment; it would tell us about their occupational mobility. All of this would help the Congress make macro-immigration policy.

Further, the alien registration program, in the past, has proved to be a useful way of checking on the accuracy of the decennial censuses. My friends at the Census Bureau will not welcome my reminder that in some census years more aliens filed their registration cards than were noted by the Census.

The registration program would also help shed light on three extremely delicate questions before Congress -- how many additional (if any) foreign farmworkers are needed? What should be done about heavy welfare utilization by some groups of refugees? And should illegal aliens be included in the count upon which seats in the House of Representatives are apportioned.

On the first, what happened to the applicants for the Special Agricultural Workers (SAW) program? How many of them stayed in rural areas? (How many are reporting Manhattan addresses?) How many of them are reporting rural, or urban occupations? At this writing more than 415,000 people have applied for SAW status -- this is a huge pool of workers and one should keep track of them (as well as encouraging growers to reduce the remarkable turnover rates among their workers.)

On the second, one of the major problems faced by the U.S. as it receives refugees is the tendency of a substantial number of them to migrate to states with generous welfare benefits. A lesser matter, which we recently observed in California, are movements of some refugees (with fixed AFDC benefit packages) to areas within California with limited services and limited job opportunities; the attraction are the lower rents. Clearly more data on the internal migrations of this population would be useful to policy makers.

Thirdly, if there were an alien registration program, and should the Congress decide that the distribution of House seats should not be based on a count including illegal aliens, then an alien registration program would provide excellent backup data for the adjustment of census data in this connection.

If there is to be an alien registration program, it should not be burdened with a requirement that the alien buys a stamp for his registration card. This seriously reduced the utility of the previous program in its last year or two. Self-addressed, postage-paid alien registration cards should be widely available in post offices and should be given to all aliens visiting an INS office for any reason. Further, aliens returning from overseas should be given these cards as they go through the ports of entry. As before, it should be legally mandatory that these cards be filed, and some thought should be given to some well-publicised enforcement of this law, to secure greater compliance, and therefor better data.

I should add that I gather, indirectly, that a number of people within the Population Association of America, the demographers' organization, are also in favor of the restoration of the alien registration program.

Mr. Jones, we have got your report. We will make that a part of the record, so if you could just highlight that, we would appreciate it.

STATEMENT OF ARNOLD P. JONES

Mr. JONES. In the interests of brevity, I would at least like to give credit to Mr. Blume and Ms. Highsmith behind me who have done the work that led to my testimony.

Very, very briefly, what I tasked them with doing was to address how well the Immigration and Naturalization Service had approached the problem of implementing the legalization provisions, so I will not have broad, policy-based contributions to make.

We see in my submitted statement that we looked at INS' Los Angeles and New York district offices. We discussed the program with its staff in the Western and Eastern regional offices and processing centers. We talked with officials at ten legalization offices and nine QDE's.

The bottom line is, as you will see from my testimony, that we had some interesting findings. For example, we have heard there have been 1.2 million applications filed up until the end of March. This is pretty close to CBO's guesstimate of the number of applications to be filed.

We recognize that studies by several organizations have provided some reasons why aliens have not applied, and we have heard lots of testimony on that. In the interests of brevity, the bottom line for the General Accounting Office is that the policy decision to extend or not to extend the deadline, whatever that should be, should not be predicated upon a sense of nonperformance of INS' responsibilities.

That concludes my statement, Mr. Chairman, and I would be happy to receive questions.

[Prepared statement of Mr. Jones, along with questions and answers, follow:]

IMPLEMENTATION OF LEGALIZATION PROGRAM

SUMMARY OF STATEMENT BY
ARNOLD P. JONES
SENIOR ASSOCIATE DIRECTOR
U.S. GENERAL ACCOUNTING OFFICE

The Immigration Reform and Control Act of 1986 established a legalization program that permits undocumented aliens to become permanent residents. They have until May 4, 1988, to apply. Congress is considering extending the deadline. No reliable data exists to forecast the number of eligible aliens who have not applied or will apply, if the deadline is extended. Therefore, we have no basis to challenge or support extending the deadline. In addition, studies by others provide reasons why some aliens have not applied. However, extending the deadline may not encourage these aliens to apply. In summary:

-- The 1.1 million applications filed with the Immigration and Naturalization Service (INS) is less than its initial forecast of 2 to 3.9 million. INS is now estimating it will receive 1.3 to 1.5 million applications, which is about the same as the Congressional Budget Office's estimate.

-- Awareness of the legalization program is high among Hispanics, according to a study that addressed program awareness.

-- INS estimates that the application fees will cover program costs if the deadline remains May 4, 1988. However, extending the program may require appropriated funds, if fees are significantly less than program costs.

-- Based on our review, the operational problems that exist do not threaten the program's viability.

-- The program has similarities to other countries' legalization programs.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our review of the Immigration and Naturalization Service (INS) implementation of the legalization program for certain undocumented aliens.

BACKGROUND

Title II of the Immigration Reform and Control Act of 1986 (IRCA) established a legalization program (amnesty) to provide legal status to aliens who have continuously resided in the United States illegally since before January 1, 1982. Aliens have until May 4, 1988, to apply to INS for legalization. If approved, aliens would be granted temporary resident status. Eighteen months later they can apply for permanent resident status and eventually they could become U.S. citizens. Legislation (H.R. 3816 and S. 2015) has been introduced to extend the deadline.

When applying for legalization, aliens have to provide documents as part of their applications. These include proof that they lived in the United States continuously since before January 1, 1982, and can support themselves. Also, they have to include the results of their medical examinations and a set of their fingerprints.

In May 1987, INS opened 107 legalization offices to receive and begin processing applications and four regional processing facilities to complete final processing of applications. In addition, it contracted with a private data processing center to enter data from applications into its computer system (legalization adjustment processing system or LAPS).

IRCA requires that applicants pay fees that would cover the program expenses. The legislative history indicates that Congress intended that the fee charged be comparable to the fee charged aliens applying to enter the United States as immigrants. To make the fees comparable and still cover its program expenses, INS set the filing fee for temporary residence at $185 for each adult and $50 for each minor child, with a $420 maximum fee for families. In addition to the filing fee, aliens pay for services such as fingerprints, photographs, and medical examinations.

To encourage undocumented aliens who might fear coming to INS directly, IRCA permits aliens to file their applications with community organizations, called Qualified Designated Entities (QDEs),[1] in lieu of applying directly to INS. These entities usually provide services in the local communities and are known to the aliens who reside there. According to INS, approximately 980 QDEs signed agreements to participate in the program. Two-thirds of the QDEs are affiliated with parent organizations, called National Coordinating Agencies (NCAs), such as the U.S.

---

[1] Undocumented aliens may also engage lawyers to assist them in preparing their applications.

Catholic Conference and World Relief, and one-third are independent.

We recently reviewed INS' activities to implement the legalization program to determine its status. We did our work in INS' Los Angeles and New York District Offices. We also discussed the program with INS staff from its Western and Eastern Regional Offices and Processing Facilities. We met with officials at 10 legalization offices and 9 QDEs. Also, we met with representatives of the NCAs during two of their regular meetings with INS and reviewed the minutes of their meetings. We also reviewed studies on reasons why aliens are not applying for the program, literature on amnesties conducted in five other countries, and other studies on legalization.

In summary:

-- The 1.1 million applications filed with INS is less than its initial forecast of 2 to 3.9 million. INS is now estimating 1.3 to 1.5 million applications, which is about the same as the Congressional Budget Office's (CBO) estimate.

-- Awareness of the legalization program is high among Hispanics, according to a study that addressed program awareness.

-- Studies by several organizations provide reasons why some aliens have not applied, and INS and some organizations have taken actions to reduce the impact of these factors. Extending the deadline may not encourage these aliens to apply.

-- INS estimates that the application fees will cover program costs, if the deadline remains May 4, 1988. However, extending the program may require appropriated funds if fees are significantly less than program costs.

-- Although operational problems exist, they do not threaten the program's viability.

-- The program has similarities to other countries' legalization programs.

No reliable data exists to forecast the number of eligible aliens who have not applied or will apply, if the deadline is extended. Because of the above factors, we have no basis to challenge or support extending the program deadline.

PROJECTED AND ACTUAL LEGALIZATION APPLICANTS

No reliable data exists on the number of undocumented aliens in the United States or on the number eligible for the program. Using 1980 Census data and estimates obtained from its field offices and QDEs, INS projected it would receive 2 to 3.9

million applications, of which 80 percent would be filed at QDEs. CBO estimated that 1.4 million aliens would be granted temporary resident status.

As of March 25, 1988, a total of 1.1 million applications had been filed. INS expects between 1.3 and 1.5 million applications will be filed by May 4, 1988.

To try to increase the number of applications, INS made two changes in procedures for the final month of the program.

-- It will pay QDEs and NCAs a recruiter fee for each applicant directed to a legalization office. This approach pays the organizations for their outreach efforts.

-- It will not require aliens to submit documentation and medical information to support their applications for at least 60 days after they file completed applications and pay their filing fees. This gives aliens time beyond the May 4 deadline to gather support for their applications.

As of March 25, INS' Western Region had received about 60 percent of the applications filed nationwide. Forty-six percent of the nationwide applications (510,755) were from the Los Angeles District. As of February 19, most of the applicants nationwide (about 70 percent) were from Mexico. About 81 percent of applicants filed directly with INS, while about 19 percent filed with QDEs.

PUBLIC EDUCATION EFFORTS

In our opinion, INS is making a good faith effort to publicize the legalization program. INS contracted with The Justice Group, a consortium of three companies, to advertise the program. From April through October 1987, the advertising was general and informative in nature. No advertising was done in November and December because INS did not want to compete with holiday advertising. A more persuasive advertising effort was started January 15, 1988, and was scheduled to continue through May. It was based on research studies funded by INS so that advertising would be targeted to different ethnic groups in various parts of the country.

INS has also pursued other public education activities. For example, its headquarters and field officials have participated in ethnic days and traveled in mobile offices to remote areas to provide information and process applications.

Under the terms of their agreements with INS, NCAs have responsibility to distribute public information materials prepared by INS. QDEs are to publicize their facilities locally. In their reports to INS, many NCAs outlined public information activities that went beyond this responsibility. For example, they and their QDE affiliates produced public service announcements for radio and television. They printed brochures and participated in media discussions on legalization. During an April 1988 meeting, NCA members told us INS could have improved its initial efforts through such activities as providing QDEs with more printed material on the legalization program.

Awareness that a legalization program exists appears to be high, at least among undocumented Hispanics. In October and November 1987, Nustats, Inc., did a research study for The Justice Group. Using a combination of sampling techniques, the study found that 92 percent of undocumented Hispanics were aware that a legalization program exists. The results from this study are considered, by Nustats and us, likely to be similar to the views of the U.S. Hispanic illegal alien population.

STUDIES ON REASONS ELIGIBLE ALIENS HAVE NOT APPLIED

Four studies and the views of NCA officials provided similar reasons why some eligible aliens did not apply for legalization. However, extending the deadline may not overcome them.

The Nustats study said that perceived ineligibility by aliens was the most commonly cited reason for not applying. About half of the 143 Spanish speaking, undocumented aliens who had not applied cited this as a reason. Nustats could not determine whether or not they were indeed ineligible. Other reasons the Nustats study found that aliens were not applying (in order of their frequency) were: (1) they do not have the money, (2) they do not know how to apply, (3) they are afraid of INS, and (4) they fear family separation.

We reviewed three other studies[2] that surveyed legalization applicants, other community service providers, and QDE directors or immigration lawyers. While each of the three studies had limitations that prevented the results from being projected beyond the people surveyed, their results were similar to Nustats'. All of the studies listed lack of documentation to support their application, fear of INS, and costs as major factors precluding people from applying. Two of the three also listed confusion about the program or law, and fear of family separation as factors.

In their quarterly reports to INS, some NCAs cited similar reasons and added that some aliens lack a sense of urgency and do not believe legalization is necessary. During an April 1988 meeting, NCA members told us that some of INS' rulings on eligibility may have caused aliens not to apply. They pointed out that INS is considering revising some of its initial decisions which could result in aliens now being eligible.

---

[2] The studies were done by the Dallas Times Herald, the National Association of Latino Elected and Appointed Officials, and the Private Immigration Agency.

INS and some private organizations have taken actions to help address the reasons why some eligible aliens are not applying. For example, INS' Western Region has expanded its education efforts as the application deadline approaches. With respect to concerns that families may be separated because some members do not qualify, INS has said that such cases will be addressed on an individual basis and that no families have been separated. One private organization is providing 10 percent interest loans to aliens for the application costs. However, fewer aliens then expected have taken advantage of them.

INS COSTS AND FEES

As of March 1988, INS had spent about $150 million and had collected $176.2 million in fees. While fees have exceeded costs, additional costs will be incurred for those applications that INS has not processed. Such costs include checking the aliens' backgrounds with other agencies (e.g., Federal Bureau of Investigation). INS projects that the total fees that it will receive by the end of the application period (May 4, 1988) will cover all of the program-related costs. Should this not occur, INS will adjust the fees aliens pay when they apply for permanent resident status.

If the program is extended beyond May 4, 1988, the ability of the application fees to cover the costs to continue the program is not known. This is because no reliable data exists to estimate the number of aliens who may apply during the extension. Depending on the number of applications, the program may require appropriated funds or may result in a surplus of funds.

OPERATIONAL PROBLEMS

When INS began processing applications, several operational problems developed. As INS gained additional experience in processing applications, some of the initial problems related to office procedures and data entry into its information system were overcome. Also, INS staff worked overtime to reduce its case backlog. As of April 2, 1988, INS had reduced the percentage of unprocessed applications to about 25 percent from about 45 percent as of February 18, 1988. However, internal control weaknesses exist in some legalization offices such as: (1) temporary residency cards are not safeguarded and (2) INS has no assurance that fingerprint cards submitted with applications contain the fingerprints of the applying alien. These problems do not threaten the program's viability.

COMPARISON OF U.S. LEGALIZATION PROGRAM TO OTHER COUNTRIES' PROGRAM

Many key elements of the U.S. legalization program are similar to programs in five other countries[3] conducted over the last 15 years. However, some of the requirements under IRCA are stricter than those in the other countries' programs.

The U.S. program requires an alien to have lived here illegally for more than 5 years, and it requires that they pay application fees. In the other countries, an alien needed an average of 9.3 months of residence to qualify. Only one other country (Australia) required aliens to pay an application fee.

The U.S. period for filing applications is at least 6 months longer than the others. Only one country (France) extended its original application deadline. The extension was for two weeks.

This concludes my prepared statement. I would be pleased to answer any questions the subcommittee may have.

---

[3] Argentina, Australia, Canada, France, and Venezuela.

QUESTION FROM SENATOR KENNEDY TO ARNOLD P. JONES

You state in your written statement that the current amnesty will probably be fully funded through fees, but that an extended program may require an appropriation.

But shouldn't costs of an extended program be significantly reduced if the Immigration Service runs the program out of its existing district offices and those SAW legalization offices which must remain open until December anyway?

QUESTIONS FOR THE RECORD

FROM: SENATOR ALAN K. SIMPSON

TO: ARNOLD JONES, GAO

1) MUCH HAS BEEN MADE OF THE INS'S ESTIMATE OF 2 TO 3.9 MILLION ALIENS ELIGIBLE FOR AMNESTY. HOW DID THE INS DEVELOP THIS FIGURE, AND WHAT IS YOUR OPINION OF THE METHODOLOGY IT USED WHEN DEVELOPING IT?

2) WHAT FACTORS ARE RESPONSIBLE FOR THE PERIOD OF TIME IT TAKES FOR THE TEMPORARY RESIDENCE CARDS TO BE ISSUED TO QUALIFIED ALIENS, AND ARE THESE FACTORS WITHIN THE CONTROL OF THE IMMIGRATION SERVICE?

3) GIVEN ITS STATUTORY MANDATE, HAS THE INS BEEN AT ALL DEFICIENT IN CONDUCTING THE PUBLIC EDUCATION PROGRAM?

Answer in response to
Question from Senator Kennedy

1. Yes, such efforts could reduce INS' cost for the extended period. However, other costs such as FBI background checks, QDE reimbursements, application processing at the regional processing center, and key punching application data into its information system would not be affected by such efforts. Further, additional INS staff may be needed if those who process the SAW applications cannot process the general amnesty applications.

Answers in response to Questions
from Senator Simpson

1. According to INS officials, the estimate was based on the 1980 Census and adjusted based on estimates from its district offices and QDEs. We did not evaluate the methodology INS used and therefore can not comment on it.

2. Initially, INS experienced probl1ems in processing legalization applications. These included the development of its information system and the policy of reviewing all recommended approvals by the legalization offices. As INS staff gained experience in processing applications, its processing time was reduced. Also, it started reviewing 10 percent of the applications the legalization offices recommended for approval. As a result, INS reduced its backlog of processed applications from about 45 percent as of February 18, 1988, to about 25 percent as of April 2, 1988. The time needed to process application has been impacted by the FBI background checks. These resulted in additional information about the applicant which warranted further review. INS initially estimated that 15 percent of the applications submitted to the FBI world require additional investigation. However, about 40 percent of the background checks are providing additional data about the applicant which requires further review.

3. In our opinion, INS properly conducted its education effort.

Senator **Kennedy**. Well, it is a good report and very helpful to the committee.

Let me just ask each of you what each of you think are the lessons learned in amnesty that are applicable to the other immigration programs.

Ms. **Meissner**. I take it you mean to other immigration duties of the government.

Senator **Kennedy**. Outreach, in terms of the outreach.

Ms. **Meissner**. Oh, in terms of the outreach. Well, outreach is very difficult to do. I think the big lesson from this program as far as implementing it publicly is that this was a great leap into the unknown for the government, for the assistance organizations, and for the aliens.

I am convinced that most parties have been sincere in discharging their duties, but they have only recently found the formula, and the formula is pretty well in place, but I think it would be useful if it had a little more time to work.

Senator **Kennedy**. Mr. North?

Mr. **North**. I will join in that. I would also add that this is an extremely complicated series of programs and it is not just a question of letting people know that there is such a program and that the application period ends on May 4. Those are some very important things to get across, but there are lots of other things that need to get across.

I sense that it is just extremely difficult to convey, particularly through some cultural and linguistic filters, some of the specifics that need to be conveyed, and I think it is a really tough challenge.

Senator **Kennedy**. Mr. Jones?

Mr. **Jones**. Being a bit of a heretic, I would say, looking at the history of immigration reform, it would have done everyone a bit better if the executive branch had had a bit of a time in anticipation of the likely passage of the bill, which we all know came out of nowhere. I mean, we all were surprised, and very pleasantly, at the last-minute machinations to get a decent piece of legislation out.

Had they had time, had the administration had the data that is absolutely essential to be able to target, based on good demographics, these pockets of people that we recognize very likely might not be brought in—we have numbers and I would suspect none of those numbers are highly reliable, so a lot of good public policy is being predicated on numbers that can be viewed as suspicious.

Remember, the CBO estimate was based on the number of potential applicants. Numbers like 2.9 million, 4 million are based on possible persons who are eligible. The whole issue of the size of the alien population was addressed in the 1980 decennial census. It was difficult then and we still, I think, need to make a more concentrated effort to find out what the target is and then base public policy on that.

Thank you, Mr. Chairman.

Senator **Kennedy**. Thank you.

Senator Simpson.

Senator **Simpson**. Mr. Chairman, I thank you, and I regretted my absence there, but I have been brought up to speed a bit.

I think one of the most important lessons here, and we forget it in the process, is that the legalization has been successful. It has been successful, and I do not know why we should start on the basis that it is a negative. There has never been another one like it in the world; we have never had numbers like that come forward from the eligible population, even if it was all guesswork.

One of the most important lessons is that the INS can do a very fine job if given the support and the resources to do it.

You know, Mr. Jones saying that the bill just came up—yes, after 6 years, it came up. I remember that. [Laughter.]

And one of the things, Mr. Jones, was that we never could get any figures from anybody, and that was the frustrating part.

We are the only, I think, country on earth that does not have any idea of what is an "ideal population" for its borders and its resources. We do not even have anybody in government to even tell us that, which is extraordinary in itself.

But just one quick note about those two dates, because there is important institutional memory about the SAW application period and the general legalization period, and I want to share that for the record because there was a reason for that.

Some have noted that one ends in May 1988 and the SAW program in November 1988, and then have asserted that both dates should have ended in November. That was not so at all, and there was a marvelous and excellent reason for that and we must not lose sight of it. At least, I hope we had a reason for everything we did.

In the SAW program, we were accommodating two harvest seasons. That is what we were doing, and that was at the request of the California delegation, Democrat and Republican alike, and other growing States: two harvest seasons, and it was thus not meant to be terminated until the late fall of 1988.

That was the reason for it, and that was to be after the second harvest after the bill was enacted. The purpose of the SAW date was thus to accommodate agricultural employers, which we accommodated all the time, and it was not to accommodate the aliens who might be applying.

The general amnesty program focused on the individual alien applying. There was a deliberate date set there of May 1988, and there was obviously no agricultural season aspect to that.

But the SAW and the general amnesty application periods could not and should not be confused at all.

And I just had one question of Doris Meissner. In your op ed piece, you said that the INS could recover its costs during an extension by consolidating offices and shifting personnel.

INS has told us that even with staff reductions and office closings, they would have to receive 300,000 additional applications if they were to break even. If INS receives 1.3 million applications by May 4, as you estimate in your op ed piece, and yet there are only 1.5 million eligible aliens, which you stated as a low estimate in your Carnegie consultation report with David North and Dr. Papademetriou, will INS not fall short by about 100,000 applicants and thus lose money?

Ms. **Meissner**. Well, the low point of the range that we set is 1.8 million. If 1.3 million actually come forward by May 4, there are still a half a million to go before reaching the low point of the range. Getting 300,000 of that half million, I do not think would be very difficult. I think that is probably about what you would get with an extension.

Senator SIMPSON. I do not want to take the time of the chairman and I appreciate his courtesy. One question, then, of Mr. North. You studied the legalization programs of other Western nations. Many have granted extensions, but the only program listed in your report on comparative legalization experiences which can be considered as successful as our program was that of Argentina in 1974 when 50 percent to 75 percent of the estimated illegal population applied. That application period was 6 months with no extension.

Extensions in other programs such as Canada's proved to be ineffective in substantially increasing the numbers. Canada's counselor told me their extensions brought in very few additional applicants.

Is there any solid evidence anywhere to support the claim that an extension will result in hundreds of thousands of additional applicants?

Mr. NORTH. First of all, I have no firsthand information about Argentina. My general sense is that governments generally when they introduce these programs tend to estimate more people will apply than do apply. I mean, that is just across the board, no matter where, and that was true in Australia, in Great Britain and Canada, and so forth.

I have not actually looked at a program where there was an extension, so I really cannot answer that. I would suggest, however, that in most other nations when they do these programs, they do it rather more generously than we do in terms of the residence requirements.

They are dealing with a much smaller population, so it is easier to be generous. And the programs tend to be somewhat simpler because they are written by the ministry as opposed to being written very carefully by the lawyers in Congress. So they are less complicated, too.

Senator SIMPSON. We will pass on now, David. [Laughter.]

Mr. NORTH. Let me say one other thing, too. You were saying earlier, Senator Simpson, that many of the people previously had minimized the size of the illegal alien population and said, no, no, we will not have that many people coming forward.

I have never taken that posture. I was very critical of the census data that came out in the early 1980's saying that there were only two million illegal aliens covered by the census. I was critical of that, saying that that was too low a figure, and I still believe that that is too low a figure.

My sense is, then, that if we are suggesting that there is an under-reaction to this census, I think we do so with clean hands.

Senator SIMPSON. Well, again, we are looking for solid evidence and that is what we do not find, solid evidence to support the claim of hundreds of thousands. That has not been answered—solid, solid evidence.

Mr. NORTH. You are looking for the kind of thing that you look for for years in terms of data on the size of the illegal alien population, and that data is no more solid now than it was in previous years.

Senator SIMPSON. Well, one question, then, of Mr. Jones about solid evidence. Is there any solid evidence, either submitted by outside organizations, by organizations—and I know how skilled and able they are, they have testified over the years—any solid evidence from anybody that has come to your attention which shows that there exists a significant number of eligible aliens who have not applied for the program or who will not do so by May 4, 1988?

Mr. JONES. As Mr. North said with the qualification, no.

Senator SIMPSON. No?

Mr. JONES. No.

Senator SIMPSON. And you say that an extension of the amnesty application period may not encourage qualified aliens to apply. Do you have anything to add to that point?

Mr. JONES. I do not have anything to add I think it is quite clear that some additional applicants will show up; that is clear. The GAO was addressing the issue of whether or not you folks should extend the deadline based on what INS did not do.

So, very particularly, I am saying we found nothing wanting in INS' performance that would have us recommend to you an extension based on that nonperformance.

Senator SIMPSON. I appreciate that, Mr. Jones. It seems to me the INS has done just about all it could. I do not know what more it could have done, and I do not think it has been deficient at all.

I just think that the numbers game is a poor game to be playing because all the players in the numbers game during the whole part of this bill were detractors. I have used some numbers once, between 3 and 12 million, and they hammered me flat. But I was just using numbers that had come in during the great game.

I know that Ms. Meissner originally gave us a figure of 1.5 million on the low estimate, and now that has gone up to 1.8 million.

Ms. MEISSNER. I am sorry. I do not recall where I have used 1.5.

Senator SIMPSON. Well, that is this report, "Legalization of Undocumented Aliens: Lessons from Other Countries," and you are a coauthor of that, released in 1987, and it says that 1.5 million is the low estimate.

Ms. MEISSNER. I would have to go back and look at it, but I believe that that is reporting the numbers from the census. We redid those numbers several months ago.

Senator SIMPSON. Okay.

Ms. MEISSNER. I would concede error if it is there, but I think it is fair to say that on this numbers issue the search for the perfect number is an improper way to go at it. There has been general agreement among the experts, over a period of many years, on the range of the illegal population. The range that the analysts present has been consistent and in agreement with what we have said.

When you look at these ranges and compare them with the numbers of applications that have been filed, there is a shortfall. It is not a huge shortfall, but it is a significant shortfall.

So the question is simply whether some more time would help diminish that shortfall. Obviously people differ, but the view that we are expressing is that there is reason to believe it could help and it is worth taking that chance because of the stakes.

Senator SIMPSON. Well, the Chairman and I, I know, share lots of similar views, but one view is that we are not really interested in numbers. We are interested in human beings and hope they will come forward. We think we have offered them an extraordinary manner in which to do that.

I thank you.

Ms. **MEISSNER**. I do not think anybody disagrees with that point.

Senator **SIMPSON**. I know they do not, and we will visit about this little red pamphlet here, on page 20. [Laughter.]

Ms. **MEISSNER**. Okay.

Senator **SIMPSON**. It may not be page 20, but it does say something like that.

Thank you very much, Mr. Chairman.

Senator **KENNEDY**. Thank you very much.

Commissioner Nelson, would you come back just for a moment?

Senator **SIMPSON**. Thank you, Mr. Chairman. I can submit my questions for Mr. Nelson in the record.

I appreciate your courtesies, Mr. Chairman.

Senator **KENNEDY**. Thank you very much.

Mr. **NELSON**. Mr. Chairman, I feel a little bit like getting the bottom half of the batting order after all of this. I just hope it is more successful than the Orioles.

Senator **KENNEDY**. One area that I should have covered and neglected to is the problem about the nurses. We have read the stories in the newspapers over the past few days about foreign nurses that have been working here and the immigration agency is not going to extend their temporary visas to work in the United States.

Could you give us an update of where we are in terms of those nurses? As you are very much aware, we are facing critical shortages for nurses now in the United States in virtually every hospital, I believe, in the country, and I am just wondering where we are on this issue.

Mr. **NELSON**. I am happy to address it at least generally, Mr. Chairman. You know, these are tough issues. Probably not many immigration issues are easy, and I think we are seeing with these H-1 nurses probably a fairly typical kind of case, the temporary resident versus the permanent resident, when you have to draw the line to be sure people are coming in temporarily. You have got labor union concerns versus management wanting the people who are clearly qualified and needed. So it is a tough area.

Now, we do have this 5-year rule, which we think generally is reasonable, the idea that they are here temporarily. In some cases, that could be extended to a sixth year, and I think that is one of the issues we are looking at.

We have been working closely with a lot of people to see if there is some resolution and we are committed to doing it. Whether it is there is still to be determined. There is always also the issue, of course, of other available workers. I realize nursing is one of those tough areas, but that needs to be addressed in the whole area—other people either from the Philippines or other foreign countries or, of course, domestics to go into that, but we are certainly willing to look at it.

I might state, and I think it goes back to maybe the beginning, that the best answer really is what you and Senator Simpson have done or started with your legal immigration bill.

There is an ability through your bill—and we think there are some changes we would like to advance; it is a good start—where we can address the need for either permanent residents or in some cases temporary residents to fill necessary jobs.

Now, that is longer term. I realize that is not going to solve the problem now, but I can only say that we think, again, as I hope has been true within legalization, it has been balanced and fair.

Having this 5-year deal—it is usually a couple of years plus extensions up to 5—that is pretty reasonable, and in most cases that ought to be enough. If there are special considerations, there might be exceptions, but we have got to be careful not to, because somebody just would like those people to stay on if they do not meet the criteria of the law, do that.

A lot of people use the H-1 as a bridge to permanent residency. A lot of times that works all right because they can qualify. The Philippines, because of long backlogs, has been difficult, particularly.

All I am saying is I know you are concerned, obviously, with labor union issues and availability of a work force. We all want, like with the growers, to get an adequate work force, and at the same time to deter illegal immigration. We will continue to work with you and others to try to find a reasonable solution.

Senator KENNEDY. Well, we would appreciate, if you would—we probably should have been more aware of the numbers and what the impact would be on the general health care system, but we would like to work with you both as the chairman of the health committee and I am sure there are interested members in the House. We want to try and work with you in a constructive way and appreciate your comments about our current bill.

But what is the current situation now? Are you reviewing that?

Mr. NELSON. We are reviewing it. Possibly Mr. Norton could explain, but we are reviewing it.

Senator KENNEDY. Well, if we could, we might have an opportunity to have our people together, the health committee staff, and also the immigration committee staff.

Mr. NELSON. We are happy to do that.

Senator KENNEDY. If we could do that in the next few days, we want to try and work this out and we would appreciate your willingness to do that.

Mr. NELSON. We are most happy to do it, Mr. Chairman.

Senator KENNEDY. We have some questions from Senator Simon which we will submit to you for the record.

[Senator Simon's questions follow:]

Q-108

SENATOR PAUL SIMON'S QUESTIONS

TO COMMISSIONER ALAN NELSON, I.N.S.

Senate Subcommittee on Immigration & Refugee Affairs

April 14, 1988

LEGALIZATION EXTENSION

1. Shortly after Congress passed the Immigration Reform and Control Act, the Immigration and Naturalization Service estimated that 200,000 individuals would apply for legalization in the state of Illinois. As of approximately three weeks ago, only 78,722 applications had been submitted. This figure is less than 40% of your estimates.

How many individuals, as a proportion of your original estimates, do you expect to come forward and apply for legalization in Illinois by May 4, 1988?

2. I am informed that in Illinois only three-eighths of those completed applications have received a final adjudication. Delays by the Lincoln, Nebraska regional processing facility have been the subject of a number of complaints in the Chicago area throughout the year.

When do you expect to have all of the legalization applications adjudicated? On what basis do you expect that the speed of final adjudication will improve?

3. As you are aware, both houses of Congress have legislation pending before them to extend the application period for legalization.

Without restating the Service's position on the merits of extension, please specify what contingency plans the Service has developed to implement an extension, particularly in the areas of public information, continued media presence, and community outreach programs.

Should the extension be enacted into law, which legalization offices in Illinois would continue to remain open?

Should the extension be passed by both houses of Congress prior to May 4, 1988 but be signed into law by the President or otherwise enacted after May 4, will the I.N.S. begin work-place or other raids in the intervening period? In this period, will the I.N.S. not implement deportations of those individuals who would otherwise be eligible for legalization?

FAMILY UNITY

1. During last year's INS Budget Authorization and oversight hearing I shared with you my concern over the lack of a nationwide uniform family unity policy under I.R.C.A. Recently, the Chicago District of the I.N.S. implemented a Family Fairness Plan which grants indefinite voluntary departure (I.V.D.) status to family members who do not qualify for legalization. I am informed that there are 14 cases in which not only has I.V.D. relief been denied but deportation orders have been issued as a result of an application for I.V.D. Under these circumstances the alien is clearly worse off for having applied and there were no confidentiality safeguards in place.

In one case, a Polish woman who was eight months pregnant and had been granted temporary residence had her husband who was ineligible for legalization apply for I.V.D. She claimed that her husband, who is currently unable to work given his immigration status, needed I.V.D. and authorization to work to support her and the baby. Not only was he denied I.V.D. status but he was also issued an I-210 which requires him to depart the United States within thirty days. If the circumstances in this case do not rise to a level of importance for the alien to receive relief, when would they?

2. Is the rate of approval for family fairness (I.V.D.) in the Chicago district representative of the rate in other I.N.S. districts?

CUBAN DETAINEES

1. Last June, the I.N.S. instituted a Release Plan for Cuban detainees. Frankly, I was very disappointed with the Release Plan as it failed to set up what in my opinion are basic procedures which are necessary to guarantee fairness and equity for Cuban detainees. The seven day notice, for example, provides little opportunity for the detainee to gain legal representation. I have been told of instances when detainees who do not speak Spanish are not provided with a translator. Also, concerns have been raised about the accuracy of the detainees' files as well as the fact that no record is created in the review process.

How has the plan been improved to address these shortcomings?

REFUGEES

1. Last year I raised my concerns about the possible closing of two of the refugee camps along the Thai-Cambodian border. I was concerned that the I.N.S. was not fully using its parole power for family reunification for this population. As you are well aware, the situation continues to be uncertain.

Given the real possibility that the Thai government could move to close the Khao-I-Dang camp, what are I.N.S. and other agencies doing to bring about a fairer review of those Cambodians denied entrance as refugees to the United States?

H-1 VISAS

1. Last December, Congress passed and the President signed into law the Carr Amendment to the Justice Department appropriations bill which delayed issuance of I.N.S. proposed rules on H-1 visas until October 1, 1988. I have expressed my concerns since 1986 that the proposed rules related primarily to the commercial success of the applicant and threatened to discourage the intercultural free exchange of ideas through art and music. I believe this delay was intended to give all sides the time and opportunity to hammer out improvements to the H-1 visa system, taking into account the needs of our domestic professional workforce and our national interest in enhancing cultural and artistic exchange.

It has come to my attention that the H-1 approval process has become increasingly difficult. I have previously written you regarding the case of an artist that wished to perform in the U.S. whose application would not be processed in time for his performance because he could not retrieve from Hungary, the country he fled, certain documents the I.N.S. required in their original form. He was scheduled to accompany an artist who had previously been granted H-1 visas for the past six years.

Could you comment on the procedure presently being followed by the I.N.S. in providing H-1 visas, including any new documentary requirements that may have been imposed since August 1986 in spite of Congress' clear intention to delay changes in the approval process of H-1 visas? I would also like a status report on the Booz/Allen/Hamilton study on H-1 visas currently being conducted for the I.N.S.

Senator KENNEDY. Thank you very much.

Mr. NELSON. Thank you.

Senator KENNEDY. The subcommittee stands in recess.

[Whereupon, at 12:45 p.m., the subcommittee was adjourned.]

APPENDIX

Commission For The Study Of International Migration
And Cooperative Economic Development

May 13, 1988

The Honorable Edward M. Kennedy
Chairman
Subcommittee on Immigration and
Refugee Affairs
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

I am writing in response to your request for a report on the Commission's activities to date and its plans and agenda for the remainder of its tenure. I am pleased to say that we are well underway and look forward to the successful conclusion of our work as we report to the President and the Congress in July 1990. We plan an Interim Report to the new President and Congress at the outset of the next Administration. I believe it necessary to say at this juncture, however, that our success so far has led to unanticipated budgetary concerns which we hope can be resolved through the appropriations process.

As you know, the Commission is charged, "in consultation with the governments of Mexico and other sending countries in the Western Hemisphere," with examining the conditions "which contribute to unauthorized migration to the United States", and to report to the President and the Congress by July 1990 on "mutually beneficial, reciprocal trade and investment programs to alleviate such conditions." The Commission's mandate is thus unique. It represents the first official inquiry by the United States into the linkage between the determinants of illegal immigration and the stage of economic development of countries from which people emigrate.

517 Cannon House Office Building, Washington, D.C. 20515 (202) 225-5380; 225-5381

Chairman

The Honorable Diego C. Asencio
Former Assistant Secretary of State

Commissioners

The Honorable Donna M. Alvarado
Director, ACTION

The Honorable Toney Anaya
Former Governor
New Mexico

Eric H. Biddle, Jr. Esq.
Attorney-at-Law

The Honorable John Bryant
Congressman
5th District, Texas

Garner J. Cline, Esq.
Attorney-at-Law

Dale S. de Haan
Former United Nations Deputy
High Commissioner for Refugees

The Reverend Timothy Healy, S.J.
President
Georgetown University

Edward C. Rivera
International Technical Service

Michael S. Teitelbaum, Ph.D.
Alfred P. Sloan Foundation

The Honorable Art Torres
California State Senate

Esther Lee Yao, Ph.D.
University of Houston

Staff

Alfonso Arenales, Esq.
Executive Director

Sergio Diaz-Briquets, Ph.D.
Research Director

Although the Commission was established in the Immigration Reform and Control Act of 1986, it did not come into being until July 1987. The twelve Commissioners were appointed by the leadership of the Congress on July 1. Their first full meeting took place on July 30. A symposium with academic and public and private sector experts on migration and economic development was held in Washington in September 10. Selection of staff was completed at the end of September; the Executive Director and the Research Director reported for duty in November. The Commission has since been laying the groundwork for the informational base upon which its final report and recommendations will be built. To do this, it has embarked on a three-track program of consultation and information-gathering through: a) consultative and fact-finding travel; b) hearings, and c) research. The latter is the most extensive, costly, and time consuming of the three.

CONSULTATION AND FACT-FINDING

Mexico

The Commission began its consultative and fact-finding travel by visiting Mexico during November 29 - December 5, 1987 (Trip Report at Tab A). In addition to Mexico City, it spent a day-and-a-half in the state of Zacatecas, one of Mexico's principal immigrant-sending areas. In Mexico City, the Commission was received by President Miguel de la Madrid, Secretary of Government (Interior) Manuel Bartlett, Secretary of Trade and Industry Hernandez, and ranking representatives of the Secretariats of Agriculture, Foreign Relations, and Program and Budget. President de la Madrid reviewed Mexico's deteriorating economic situation and the social tensions that arise from it, agreed to name a counterpart group to work jointly with the Commission in pursuit of its mandate, and designated the National Population Council to perform that function. Seminar-type sessions were held with the Cabinet and other officials visited, including of the Mexican Congress, as well as with academic experts at the Colegio de Mexico and representatives of the private sector at a meeting with the American Chamber of Commerce. In Zacatecas, among other things, Governor Borrego hosted the Commission on a visit to a cooperative farm, most of whose male working population had worked legally or illegally in the United States. The Commission learned that some $1 million per week is remitted to families in Zacatecas by relatives working in the U.S., and that inadequate water supplies are a major constraint to agriculture production in the State, thus providing strong incentive to migrate.

President de la Madrid's agreement to discuss the Commission's charter and to name a counterpart group marked an unprecedented step forward in Mexico's relations with the United States on immigration matters. It was the first time in many years that

Mexico had agreed to discuss immigration issues with us. The Mexicans, in turn, were impressed with the fact that the United States was for the first time proposing to discuss the linkage between illegal immigration and economic development.

As a follow-on to this visit, a Commission working group met in Mexico City in January with a counterpart group headed by National Population Council Secretary General Geronimo Martinez (Trip Report at Tab B). The two groups agreed on a joint research agenda to look into fourteen specific subjects of mutual interest. The agenda was heavily weighted towards economic development issues.

Wrapping up this phase of our relationship with Mexico, the Commission visited southern California and the Mexican cities of Tijuana and Mexicali in mid-March 1988 (Trip report at Tab C). The Commission was impressed by the high degree of interdependence of the area on both sides of the border between San Diego/ Tijuana and Mexicali/ Calexico. It was similarly struck by the economic development potential of the Mexican side of the border, specifically, by the assembly and manufacturing ("maquiladora", or "twin plant") industry in Tijuana and the electric power potential of a large thermal energy plant just outside of Mexicali.

The Caribbean Basin

The Commission is now turning its attention to the Caribbean. It will visit Puerto Rico, the Dominican Republic and Haiti next week, and plans to visit the largest English-speaking island nations and the northern coast of South America in September. A visit to Central America is projected for early in the next fiscal year. This will conclude the Commission's foreign travel except for a brief visit to the Texas border area and a possible return visit to Mexico City as the final report is being prepared.

HEARINGS

An informal hearing was held in San Diego on March 16 (see Trip Report at Tab C). The first formal hearings will be held in Washington, D.C., timed to set the stage for presentation of the Interim Report to the new Administration and Congress. A hearing in Dallas is planned to take place during the Commission's visit to Texas in November. Four other hearings are being planned during 1989 in Boston, Denver, San Francisco and Miami.

RESEARCH

The heart of the Commission's work is the research program. Our research strategy has been devised with three objectives in mind: a) to cull existing material on migration and development and synthesize it so as to avoid spending time and money by duplicating work already in existence; b) to promote original research to serve as the documentary foundation for our ultimate recommendations in the Final Report; c) to establish and then strengthen our ties with counterpart entities, and through them with governments of sending countries, and to build constituencies in support of our work in both sending countries and in the United States. The joint research agenda agreed to with our counterpart Mexican group illustrates the latter objective. On the other hand, it also illustrates our major quandary: how to meet commitments that flowed naturally from the positive Mexican reaction to the Commission with the financial constraints imposed on the Commission by its small budget. As you know, Mexico has been undergoing serious financial difficulties. Our counterpart group told us flatly it could not fund any of the 14 studies both groups deemed appropriate and relevant to their joint labors. The Commission's entire research budgets for FY 1988 and FY 1989 are insufficient to cover the estimated $425,000 expenditure for the Mexican research effort, let alone other research activities to be carried out domestically and in cooperation with Caribbean countries. And we cannot appeal to the usual private sponsors of research (e.g., foundations, corporations) without circumventing the appropriations process. Meanwhile, we anticipate that additional commitments will flow from our forthcoming contacts with Caribbean island governments. They will undoubtedly expect us to carry the burden of paying for our initiative.

In the United States, our research program is intended to provide a sharp focus on the relationship between undocumented immigration and economic development by analyzing an interlocking web of specific issues (see Research Agenda at Tab E). Some 30 research contracts have been issued and others are being negotiated. Many leading academics have agreed to minimal fees, in effect accepting payment "in kind" via the prestige derived through association with the Commission. The domestic research effort is largely being conducted through four major university centers: a) The LBJ School of Public Affairs at the University of Texas at Austin; b) The Center for U.S.-Mexican Studies at the University of California at San Diego; c) The Sociology Department of Florida International University in Miami; and d) The Hemispheric Project of the Center for Immigration Policy and Refugee Affairs at Georgetown University in Washington, D.C.

The first research papers will be delivered to us in July/August 1988, and will contribute to the formulation of our Interim Report. The remainder of the research will stage in over the next 12-14 months. Foreign research conclusions should also be available during the latter time-frame.

Mr. Chairman, I hope the above will give you and the members of your Subcommittee some idea of where the Commission stands and where it intends to go. In terms of its mandate to consult with governments of the Western Hemisphere, the Mexican experience was both encouraging and sobering. We anticipate similarly positive reactions in the Caribbean next week, and in the Eastern Caribbean and Central America thereafter. This response could not have been foreseen when the Commission was established. Therefore, no allowance could be made for it in the budget. As I said in my testimony before the House Appropriations Subcommittee on March 23: "...this Commission in effect focuses on the 'flip side' of the immigration issue. The Immigration Reform and Control Act of 1986, which gave birth to the Commission, was carefully crafted to deal with the 'pull' factors encouraging unauthorized immigration to the United States. This Commission is charged with addressing the 'push' factors. We look to the appropriations process to enable the Commission effectively to meet the high expectations set for it by the Congress".

I am at your disposal for any matter concerning the Commission that may be of additional interest to you or your subcommittee.

Sincerely,

Diego C. Asencio

Diego C. Asencio
Chairman

DCA:mbg

Attachments: As Stated

TESTIMONY

BY

MAYOR EDWARD I. KOCH

CITY OF NEW YORK

Submitted for the record to the
SENATE COMMITTEE ON THE JUDICIARY

April 14, 1988

CONTENTS

I. Introduction. 1

II. Problems Encountered in Getting the Amnesty Program Off the Ground Argue for an Extension. 2

III. The Low Turn-Out, Particularly in Ethnically Heterogeneous Cities like New York City, Argues for an Extension. 4

IV. An Extension Period Would Allow Time to Apply the Lessons Learned About How to Administer a Successful Amnesty Program. 5

V. The New York City Experience Demonstrates that an Extension Period, Combined with Community-Based Outreach, Could Better Achieve Congress' Goals for the Amnesty Program. 7

I. Introduction.

The City of New York supports an extension of the one-year period in which undocumented aliens may apply for legal status under the general legalization ("amnesty") program of the Immigration Reform and Control Act of 1986 (IRCA). We support it because the numbers of applicants have been disappointingly low, particularly in New York and other cities along the East Coast. We support it because we believe there are many substantive changes that can be made in the program's regulations and public outreach that would result in a much larger turnout nationwide.

The Immigration Reform and Control Act is an extraordinarily complex piece of legislation, and the regulations subsequently drafted by the Immigration and Naturalization Service (INS) are equally complex. There are many problems inherent in the statute and regulations. Some could not have been known when the legalization offices opened their doors on May 5, 1987, but many were known. More problems became known as the amnesty program moved into full operation. The shortcomings were clear, and many of the remedies were clear; that is the basic message of the recent Carnegie Endowment report by Doris Meissner and Demetrios Papademetriou.

Given the complexity of the program and the low rate of turnout, shouldn't we extend the program so we can apply the lessons learned in order to benefit the largest possible number of potentially eligible aliens?

II. Problems Encountered in Getting the Amnesty Program Off the Ground Argue for an Extension.

IRCA gave the INS only six months in which to draft, circulate and promulgate final regulations; find space and staff for 107 new legalization offices; train staff in how to evaluate and adjudicate applications; select and train a network of community organizations to assist prospective applicants in completing their applications; and contract with an advertising firm or consortium to design, produce and distribute public information for a national media campaign and for distribution by community organizations. The INS had responsibility too for designing and operating a new employer sanctions system, and for educating the nation's employers in how the system worked.

Needless to say, when the six-month start-up period ended, no one was fully ready. The INS released final regulations just as the legalization offices opened; the "qualified designated entities" -- community organizations with contracts to assist the INS in counseling and working with applicants -- were just being notified of their selection, had received no start-up funds, and were largely unstaffed and untrained. The nationwide public information campaign had barely gotten off the ground; it did not really do so until many months later, and then primarily in the Southwest. The INS/QDE contracts called upon the QDEs to disseminate INS-produced information on the program to their clients, but many QDEs refused to do so; they felt the materials should have advised potential applicants to seek QDE services, and they were not satisfied with the content of the materials. A revised and improved set of materials has been produced, but it has not arrived yet in New York, and we have barely one month left till May 4.

The INS deserves credit for including the immigrant advocacy community in a two-stage comment period as the regulations were being written. Many important improvements were made in the preliminary stages, but others were not. Some were made later; for example, the rule that disqualified undocumented aliens who had left the United States briefly and returned on legal nonimmigrant visas was changed in October. Some changes were made merely days ago; undocumented children in foster care are no longer disqualified as "likely to become public charges," but it took a law suit by the City of New York and the Legal Aid Society to bring that change about.

Other much more widely applicable regulatory changes and clarifications could still be made; for example, the INS could review its family unity policy in order to give voluntary departure status and work authorization to spouses of eligible aliens. The INS could more aggressively publicize the beneficial changes that it has already made, such as the liberalization of the documentation requirements as actually applied in individual cases. Here in the East we would appreciate some reconsideration of the length of temporary absence that disqualifies an applicant from eligibility; this rule is prejudicial to applicants in the East because they must leave and reenter through airports, under inspection, unlike their Western counterparts who can leave and reenter without notice. The fear of deportation has an extra sting in the East because of the costs of air travel and the difficulty of reentering the United States without discovery.

III. The Low Turn-Out, Particularly in Ethnically Heterogeneous Cities like New York City, Argues for an Extension.

The disappointingly low numbers of applicants, especially on the East Coast, are a well-known phenomenon. New York State continues to produce from five to six percent of all amnesty applicants although some researchers believe that New York State is home to 12 percent of the nation's undocumented aliens. As of March 17, the New York City INS district had generated only 60,289 amnesty applications out of a nationwide total of 1,073,400. There is, of course, no definite count of the number of eligible aliens in the New York district, but the figure surely must be three to five times greater than the application total shows.

Even in California, where the turnout has been highest, immigration experts admit that the program has been much more successful with Mexicans -- by far the largest eligible nationality group -- than it has been with the smaller and more heterogeneous groups of Asians. We have learned that the more heterogeneous an immigrant community is, the harder it is to reach all its members. Languages differ, fears differ, islands of trust differ, use of media differs, and an effective grapevine is hard to establish. In New York, our heterogeneity is our pride, but it has made it much more difficult to reach everyone who should be reached.

We believe that a mere extension of the amnesty year, although it might bring in some more applicants, would be limited in effectiveness without the application of some of the lessons learned to date. The 60-day documentation extension recently announced by the Department of Justice may make some small difference, but the application date is still May 4, still only a month away.

IV. An Extension Period Would Allow Time to Apply the Lessons Learned About How to Administer a Successful Amnesty Program.

The critical issue is how we use an extension period. An extension period would provide the INS with time to clarify and liberalize the regulations; to adjudicate its backlog of cases so that undocumented aliens everywhere start to hear of friends and neighbors who went through the process successfully; to disseminate its new, ethnically tailored publicity materials; to publicize the availability of the QDEs and to make them partners in the outreach effort, as the original INS/QDE contract stipulated; to assuage employers' fears about providing proof of work histories to their eligible employees, whose need for such documentation is critical.

An extension period would give community organizations the opportunity to design recruitment strategies that would appeal to their own ethnic communities. It would permit new players, whose involvement in immigration issues began or developed in the first year, to make use of their growing commitment and expertise. I am thinking particularly of local foundations and business organizations, and I am thinking of local governments like the City of New York. We began our efforts to support and publicize IRCA's legalization opportunities as soon as the amnesty application period opened, but there is no doubt that we have increased our creativity, our investment in staff and dollars, and our effectiveness as the year has progressed. Certainly other organizations and municipalities have had the same experience.

V. The New York City Experience Demonstrates that an Extension Period, Combined with Community-Based Outreach, Could Better Achieve Congress' Goals for the Amnesty Program.

I would like to close this statement by referring specifically to our experiences with the legalization program in New York City -- experiences, I believe, that support the argument for an extension period that builds on the lessons we have learned to date. Over the amnesty period, the New York City Immigration Hotline, funded jointly by the City, the INS, and a consortium of city foundations, has expanded four times in order to handle the volume of calls it receives. At the start, it was open 40 person/hours per week; now it is open 378 person/hours, and we know there are callers who still can't get through. The service is live, and our 23 telephone counselors speak 15 languages. Their main function is to provide basic facts on IRCA's four legalization programs, and to guide callers to community organizations in their neighborhoods, where their language is spoken, for help in preparing applications. So far, they have fielded 16,000 calls. Clearly, business is picking up as the year progresses and word of the amnesty program spreads.

In January, as we developed a better understanding of the kind of outreach that was needed, we added a "Neighborhood Immigration Initiative," in which we flooded immigrant neighborhoods with hand-distributed flyers, posters, open houses, and media events. The Initiative pulls together neighborhood groups, immigrant and ethnic organizations, local parishes, and community leaders to spread the word about amnesty, and to quell immigrants' fears of deportation for self or family should they apply.

The first neighborhood to which we went was Washington Heights in Upper Manhattan, with its sizable Dominican population. Dominicans constitute the largest number of legal aliens in the city, which gave us reason to believe that there was probably a sizable number of undocumented Dominicans as well. Yet relatively few Dominicans had applied for amnesty. As of January 21st, 1,897 Dominican applicants from New York City had been recorded in the central INS computer bank. Even accounting for a lag in computer input, the number is very low; one study based on 1980 Census and INS data suggested that 14,000 undocumented Dominicans were living in New York State -- most of them in the city. The undocumented aliens of 1980 should be the applicants of today.

As the Washington Heights Initiative unfolded over three weeks, teams of community workers, matched with teenage members of the City Volunteer Corps, saturated the neighborhood with leaflets, brochures and posters. Informational open houses were held in churches, schools, and community centers. Successful amnesty applicants provided live testimonials to the benefits of the legalization program. City officials and immigration experts got themselves on ethnic radio talk shows -- a sure-fire draw for questions from listeners.

In some ways, the Initiative resembled a get-out-the-vote campaign. On a typical day, ten City Volunteers and ten community residents formed five teams, fanning out into the neighborhood, walking up and down the major avenues, handing out cards bearing the Hotline phone number, placing posters in store windows, leafletting community centers, meeting rush hour crowds at subway exits, talking about the amnesty program to anyone who wanted to listen. If a passer-by showed interest, but denied the program had any relevance to him, he or she was urged to take a flyer "for a friend or neighbor."

The outreach teams learned many reasons for the low application figures. Some people had never heard of the amnesty program. Others did not know there was a May 4 cutoff date. Some thought they would lose their Dominican citizenship if they obtained legal status in the United States. Some did not know that the new law would erase their ability to find employment if they did not get legal status. Many people were confused or fearful and did not know where to turn for help.

The preliminary returns from Washington Heights were encouraging. The number of aliens seeking legalization assistance from community immigration counseling agencies tripled. The proportion of Spanish speaking callers to the Hotline increased from 14 to 37 percent, and most of these callers were from Washington Heights.

Based on these results, we expanded the Initiative into the borough of Queens, with its many Asian and Hispanic communities; into central Brooklyn, with its concentration of Haitians and West Indians; and into the Bronx with its mixture of Hispanic, Asian and Caribbean inhabitants.

Other evidence suggests that the neighborhood outreach program is working. The number of calls to the Hotline more than doubled -- in part because of higher Hotline staffing levels and in part because of the Initiatives. The New York District INS reported a 41 percent increase in legalization applications from January to February -- a much higher increase than the nationwide rate of 15 percent. It will probably take several months before the central INS computer system can generate the data that will allow us to correlate our areas of effort with actual application totals, but the evidence from the Initiatives points strongly in one direction: community-based outreach programs must be the cornerstones of an effective legalization program. Our evidence clearly supports similar findings in the Meissner/Papademetriou report.

Our experiences in New York City argue persuasively for an extension of the amnesty application period. Although the INS is to be commended for getting such a massive program off the ground, many problems tended to undermine the program's credibility and effectiveness. The recent increase in the New York district application rate suggests that some of the activities undertaken by the INS, the City, and community groups have begun to produce their desired effects.

If we stop now, however, we will be left with the cold possibility that as much as two-thirds of the eligible population in New York City will not have applied. When Congress enacted the Immigration Reform and Control Act, its intentions were far more generous than that. By extending the application period, by building on what we have learned, we will ensure that many more people will be brought to full participation in our society, as Congress originally intended.

NATIONAL COUNCIL OF
LA RAZA
Raúl Yzaguirre, President

National Office
Twenty F Street, N.W.
Second Floor
Washington, D.C. 20001
(202) 628-9600

LEGALIZATION REGULATORY & POLICY CHANGES: A SUMMARY

	ISSUE	DATE ANNOUNCED	DATE FINALIZED
1.	Felony/Misdemeanor Classification (Texas-DWI)	June 16	Jan. 17
2.	Stateside criteria -- departure not interrupt residence	July 14	Jan. 17
3.	Foreign students - eligible if completed before 1/1/82	July 14	Jan. 17
4.	Waivers -- clarification of grounds for waivers	August 6	N/A
5.	HIV Testing -- requirement for pre-Dec. 1 applicants	August 8	Nov. 18
6.	Asylum applicants -- eligible if filed before 1/1/82	August 19	Jan. 17
7.	A & G Visaholders -- eligible if employment ceased by 1/1/82	August 25	Jan. 17
8.	Public charge:		
	--clarify standards & define public cash assistance	September 20	N/A
	--clarify receipt by eligible child not count against family	March 18	Not codified
	--clarify that foster children eligible	March 23	Not codified

Program Offices — Phoenix, Arizona — Edinburg, Texas — Los Angeles, California

LA RAZA: The Hispanic People of the New World

	ISSUE	DATE ANNOUNCED	DATE FINALIZED
9.	Documentation of continuous residence		
	--Calif. regional facility issues guidelines	September 31	N/A
	--field telegram clarifying standards	October 8	N/A
	--document checklist disseminated	October 29	N/A
10.	Re-entry -- eligibility for unlawful non-immigrants who re-entered the U.S. with valid visa	October 28	Jan. 17
11.	Ineligible family members -- "family fairness policy"	October 21	Nov. 13
12.	Interim Rule -- publication of regulations	Nov. 17	Jan. 17
13.	"Known to the Government"		
	--court decision overturns rule in Dallas district only	Sept. 22	
	--court decision overturns rule in Eastern and Southern U.S. (class-action)	March 30	
	--court decision pending -- Western and Northern U.S.	pending	
14.	Court decision overturns "advance permission" requirement for post May 1 absences from U.S.	April 22	
15.	"Brief and casual" absences not break residence		
	--suit filed February 1988 (class action); decision pending		

The Justice Group

(SURVEY CONDUCTED UNDER CONTRACT WITH THE IMMIGRATION AND NATURALIZATION SERVICE)

Image of INS among Hispanic illegals "Trustworthy"

INS Region	May	October
Northern	72%	83%
Southern	85	90
Eastern	69	78
Western	78	81
Overall	78	82

Image of INS among Hispanic illegals "Helpful"

INS Region	May	October
Northern	84%	87%
Southern	93	97
Eastern	91	83
Western	92	89
Overall	91	89

Image of INS among Hispanic illegals "Honest"

INS Region	May	October
Northern	72%	80%
Southern	91	90
Eastern	74	86
Western	83	86
Overall	82	86

Image of INS among Hispanic illegals
"Fair"

INS Region	May	October
Northern	57%	74%
Southern	86	91
Eastern	63	73
Western	77	76
Overall	75	78

The Justice Group

Personal reasons for applying for legalization
Overall

	May	October
• Make life better overall	73%	81%
• Help get a better paying job	65	78
• Help earn more money	65	71
• Get closer to become U.S. citizen	54	62
• Help children become residents	39	56
• Get children closer to citizenship	38	51
• Help relatives immigrate to U.S.	37	46
• Become eligible for govt. assist.	20	31

The Justice Group

Why are some people not applying?
Overall

	May	October
• Don't know how to apply	39%	39%
• Don't have the money for application	37	45
• Believe to be not eligible for program	34	49
• Fear of INS knowing they are in U.S.	29	25
• Fear of being separated from family	26	25
• Plan to return to native country	15	17
• Have bought documents for staying here	15	18
• Feel disloyal to native country	12	16
• Fear loss of native culture	9	16
• Fear loss of native citizenship	9	14

The Justice Group

Among respondents who have not applied, how likely would you be to apply if the deadline was tomorrow?

	Overall		Northern		Southern		Eastern		Western	
	May	Oct.	May	Oct.	May	Oct.	May	Oct.	May	Oct.
Very likely	53%	55%	46%	68%	55%	68%	32%	41%	57%	52%
Somewhat likely	23	20	26	21	27	14	18	24	22	20
Not likely at all	19	20	26	11	15	14	31	18	16	22

Among those that have not applied: "I am planning to apply to the legalization program but haven't gotten around to it yet."

• Strongly agree	53%
• Somewhat agree	18%
• Not at all agree	21%

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

A PROCLAMATION
by the Governor of the State of California

WHEREAS, the United States Congress enacted the Immigration Reform And Control Act on November 6, 1986 in an act of generosity, which allows illegal aliens a chance to legalize their status; and

WHEREAS, the amnesty program permits individuals who entered the United States prior to January 1, 1982, and who have continuously resided in an illegal status since that date, to legalize their immigration status and live legally in our nation; and

WHEREAS, it is estimated that there are currently several million illegal individuals living in the United States, many of whom have not applied for the benefits of legalization; and

WHEREAS, due to the confidentiality provisions of this unique legislation, no information provided on the amnesty application will be used to deport an applicant or non-qualifying family members; and

WHEREAS, under current law, the amnesty program will not be extended and no applications will be accepted after May 4, 1988; and

WHEREAS, all qualified illegal aliens are strongly urged to apply for this once in a lifetime opportunity to legalize their status and continue to live and to work in the United States without fear;

NOW, THEREFORE, I, GEORGE DEUKMEJIAN, Governor of the State of California, do hereby encourage all illegal aliens to apply for amnesty under the Immigration Reform and Control Act and to enjoy the freedom of America this law provides.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 29th day of February 1988.

George Deukmejian
Governor of California

ATTEST:
March Fong Eu
Secretary of State

State of Nevada

Executive Department

A Proclamation by the Governor

WHEREAS, THE UNITED STATE CONGRESS ENACTED THE IMMIGRATION REFORM AND CONTROL ACT ON NOVEMBER 6, 1986 IN AN ACT OF GENEROSITY, WHICH ALLOWS ILLEGAL ALIENS A CHANCE TO LEGALIZE THEIR STATUS; AND

WHEREAS, THE AMNESTY PROGRAM IS FOR INDIVIDUALS WHO ENTERED THE UNITED STATES PRIOR TO JANUARY 1, 1982, AND WHO HAVE CONTINUOUSLY RESIDED IN AN ILLEGAL STATUS SINCE THAT DATE; AND

WHEREAS, ALTHOUGH THERE ARE CURRENTLY AN ESTIMATED SEVERAL MILLION ILLEGAL INDIVIDUALS LIVING IN THE UNITED STATES, MANY HAVE NOT APPLIED FOR THE BENEFITS OF LEGALIZATION; AND

WHEREAS, DUE TO THE CONFIDENTIALITY PROVISIONS OF THIS UNIQUE LEGISLATION, NO INFORMATION PROVIDED ON THE AMNESTY APPLICATION WILL BE USED TO DEPORT AN APPLICANT OR NON-QUALIFYING FAMILY MEMBERS; AND

WHEREAS, THIS PROGRAM WILL NOT BE EXTENDED AND NO APPLICATIONS WILL BE ACCEPTED AFTER MAY 4, 1988; AND

WHEREAS, ALL QUALIFIED ILLEGAL ALIENS ARE STRONGLY URGED TO APPLY FOR THIS ONCE IN A LIFETIME OPPORTUNITY TO LEGALIZE THEIR STATUS AND CONTINUE TO LIVE AND TO WORK IN THE UNITED STATES WITHOUT FEAR;

NOW, THEREFORE, I, RICHARD H. BRYAN, GOVERNOR OF THE STATE OF NEVADA, DO HEREBY ENCOURAGE ALL ILLEGAL ALIENS TO ENJOY THE FREEDOM THAT THIS LAW PROVIDES BY "COMING OUT OF THE SHADOWS," JUST AS THOSE INDIVIDUALS HELD IN BONDAGE CHERISHED THE EMANCIPATION GRANTED TO THEM BY PRESIDENT ABRAHAM LINCOLN, WHOSE LEGACY WE HONOR TODAY.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 2nd day of February, in the year of Our Lord one thousand nine Hundred eighty-8.

Governor

By the Governor:

Secretary of State

OFFICE OF THE GOVERNOR
STATE OF ARIZONA
Evan Mecham, Governor

Proclamation

"AMNESTY AWARENESS MONTH"

WHEREAS, the United States Congress enacted the Immigration Reform And Control Act on November 6, 1986 in an act of generosity, which allows illegal aliens a chance to legalize their status; and

WHEREAS, the amnesty program permits individuals who entered the United States prior to January 1, 1982, and who have continuously resided in an illegal status since that date; and

WHEREAS, although there are currently an estimated several million illegal individuals living in the United States, many have not applied for the benefits of legalization; and

WHEREAS, due to the confidentiality provisions of this unique legislation, no information provided on the amnesty application will be used to deport the applicant or non-qualifying family members; and

WHEREAS, because this program will not be extended and no applications will be accepted after May 4, 1988; and

WHEREAS, all qualified illegal aliens are strongly urged to apply for this once in a lifetime opportunity to legalize their status and continue to live and to work in the United States without fear; therefore

NOW, THEREFORE, I, Rose Mofford, Acting Governor of the State of Arizona, do hereby proclaim the month of March, as

"AMNESTY AWARENESS MONTH"

in Arizona, and I encourage all illegal aliens to enjoy the freedom that this law provides by 'coming out of the shadows' by participating in the mainstream of society, and sharing the American dream.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona

Rose Mofford
ACTING GOVERNOR

DONE at the Capitol in Phoenix on this fifteenth day of March in the Year of Our Lord One Thousand Nine Hundred and Eighty-eight and of the Independence of the United States of America the Two Hundred and Twelfth.

ATTEST:
Karen Osborne
Acting Secretary of State

STATE OF COLORADO

EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471

Roy Romer
Governor

HONORARY PROCLAMATION

AMNESTY AWARENESS MONTH
March 1988

WHEREAS, the United States is a nation of immigrants; and

WHEREAS, last year, the U.S. began a twelve-month legalization or amnesty program for undocumented residents who have lived in the country since 1982; and

WHEREAS, many of Colorado's undocumented residents who are eligible for amnesty under this program have not applied; and

WHEREAS, the federal government and Colorado want to make eligible residents aware of the legalization program and of the procedures for application;

NOW, THEREFORE, I, Roy Romer, Governor of Colorado, proclaim March 1988, as

AMNESTY AWARENESS MONTH

in the State of Colorado.

GIVEN under my hand and the Executive Seal of the State of Colorado, this twenty-sixth day of February, 1988

Roy Romer

Roy Romer
Governor

The Office of the Governor

Executive Department
State of Idaho
Boise

Proclamation

WHEREAS, the United States Department of Justice, Immigration and Naturalization Service has Idaho offices in Boise and Idaho Falls and a District Headquarters in Helena, Montana; and

WHEREAS, said Immigration Offices in Boise and Idaho Falls are charged with the responsibility of accepting and forwarding Legalization (Amnesty) applications pursuant to the Immigration Reform and Control Act of 1986; and

WHEREAS the deadline for submitting applications for Legalization (Amnesty) is rapidly approaching--the deadline for Section 245(A) Legalization (Amnesty) being May 4, 1988; and

WHEREAS, it is deemed appropriate to encourage all eligible individuals residing in Idaho who have not yet submitted their applications to apply prior to this deadline to the Boise or Idaho Falls office;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, do hereby proclaim and designate the month of March 1988 to be

IMMIGRATION AMNESTY MONTH

in Idaho, and I hereby encourage full participation by all citizens to help those desiring the benefits this program provides to complete their application prior to the deadline of May 4, 1988.

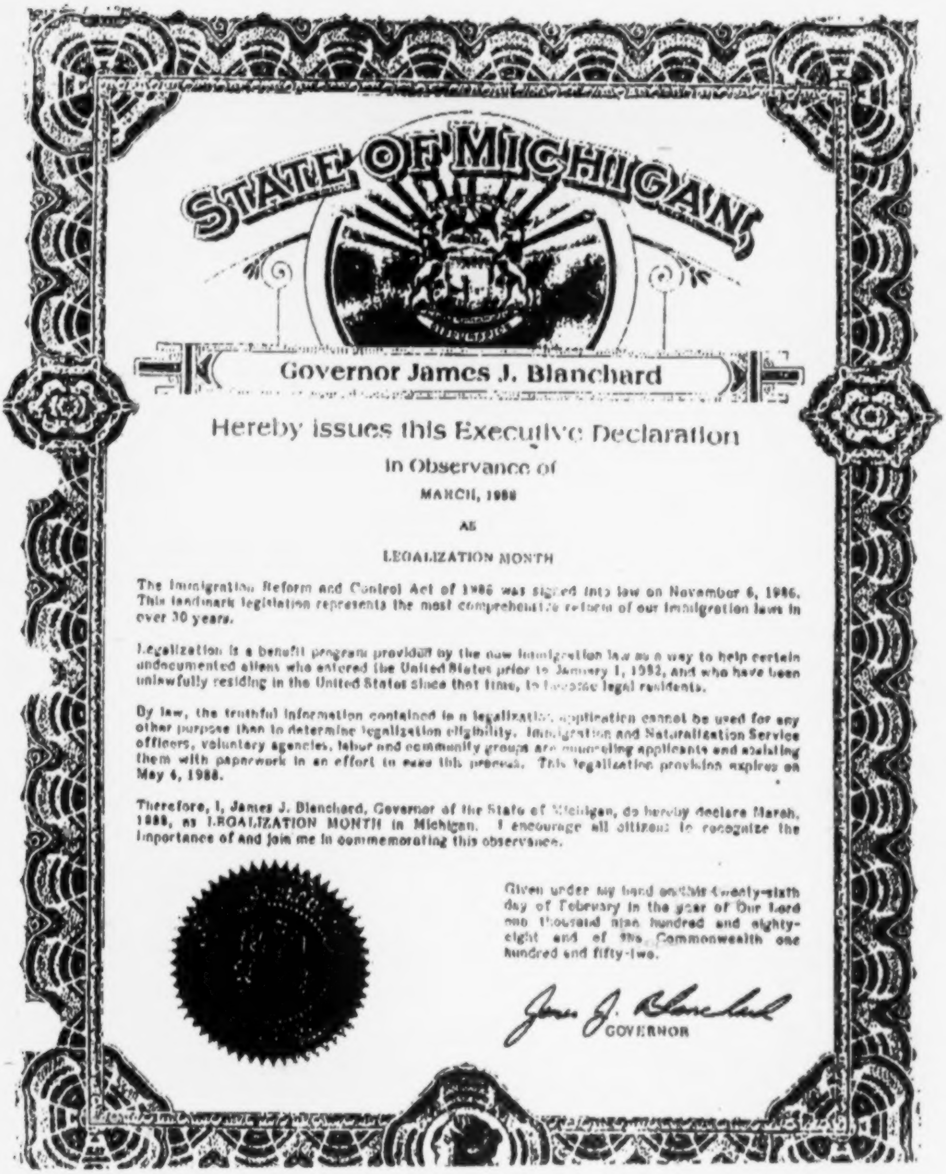
IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the twenty-fifth day of February, in the year of our Lord nineteen hundred eighty-eight, and of the Independence of the United States of America the two hundred twelfth, and of the Statehood of Idaho the ninety-eighth.

Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:
Pete T. Cenarrusa

03/28/88 14:52 ☎ 612 725 3248 IMM & NATZ SVC ▨ 04

[illegible] 313 220 3262 P.03



STATE OF MICHIGAN

Governor James J. Blanchard

Hereby issues this Executive Declaration

In Observance of

MARCH, 1988

AS

LEGALIZATION MONTH

The Immigration Reform and Control Act of 1986 was signed into law on November 6, 1986. This landmark legislation represents the most comprehensive reform of our immigration laws in over 30 years.

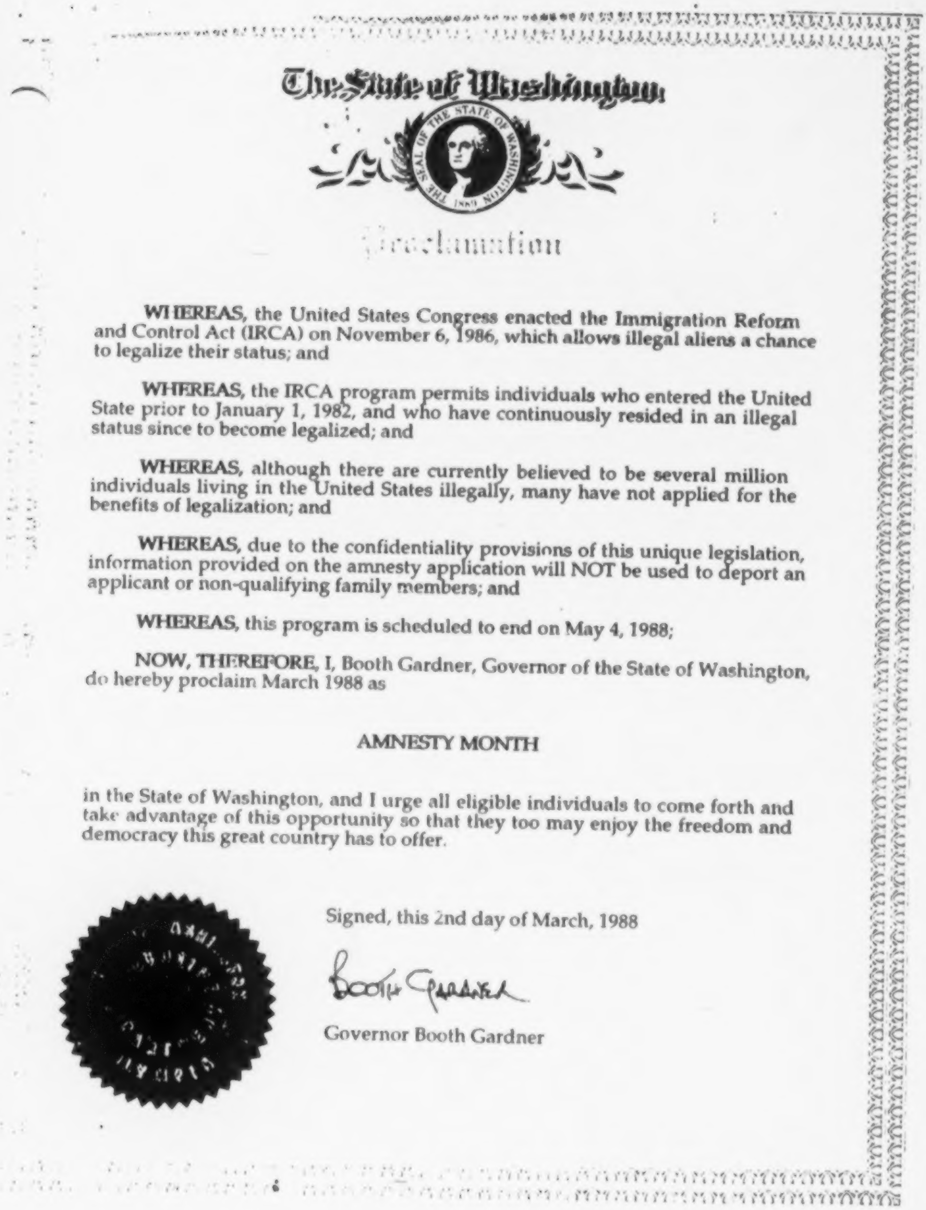
Legalization is a benefit program provided by the new immigration law as a way to help certain undocumented aliens who entered the United States prior to January 1, 1982, and who have been unlawfully residing in the United States since that time, to become legal residents.

By law, the truthful information contained in a legalization application cannot be used for any other purpose than to determine legalization eligibility. Immigration and Naturalization Service officers, voluntary agencies, labor and community groups are counseling applicants and assisting them with paperwork in an effort to ease this process. This legalization provision expires on May 4, 1988.

Therefore, I, James J. Blanchard, Governor of the State of Michigan, do hereby declare March, 1988, as LEGALIZATION MONTH in Michigan. I encourage all citizens to recognize the importance of and join me in commemorating this observance.

Given under my hand on this twenty-sixth day of February in the year of Our Lord one thousand nine hundred and eighty-eight and of the Commonwealth one hundred and fifty-two.

James J. Blanchard
GOVERNOR



The State of Washington

Proclamation

WHEREAS, the United States Congress enacted the Immigration Reform and Control Act (IRCA) on November 6, 1986, which allows illegal aliens a chance to legalize their status; and

WHEREAS, the IRCA program permits individuals who entered the United State prior to January 1, 1982, and who have continuously resided in an illegal status since to become legalized; and

WHEREAS, although there are currently believed to be several million individuals living in the United States illegally, many have not applied for the benefits of legalization; and

WHEREAS, due to the confidentiality provisions of this unique legislation, information provided on the amnesty application will NOT be used to deport an applicant or non-qualifying family members; and

WHEREAS, this program is scheduled to end on May 4, 1988;

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington, do hereby proclaim March 1988 as

AMNESTY MONTH

in the State of Washington, and I urge all eligible individuals to come forth and take advantage of this opportunity so that they too may enjoy the freedom and democracy this great country has to offer.

Signed, this 2nd day of March, 1988

Booth Gardner

Governor Booth Gardner

National Immigration, Refugee & Citizenship Forum
227 Massachusetts Ave., N.E., Suite 120, Washington, DC 20002 (202) 544-0004

April 13, 1988

Senator Edward M. Kennedy
Chairman, Subcommittee on Immigration
and Refugee Policy
United States Senate
Washington, D.C.

Dear Senator Kennedy:

Enclosed is testimony that I respectfully request be included in the record of the April 14, 1988 oversight hearing on the Immigration Reform and Control Act of 1986.

The testimony, together with attachments, specifically addresses implementation of the legalization program and the need for a one-year extension of the application period.

I appeared as a witness at the House IRCA oversight hearings held on March 30, and presented the enclosed testimony at that time. I think that the facts and analysis set forth will assist the Subcommittee and the Senate consider the status of legalization implementation, and judge the wisdom of an extension of the application period.

Sincerely,

Rick Swartz

Rick Swartz

RS/kg
Enclosure(s)

cc: Senator Simpson
Senator Simon
Subcommittee staff

The National Forum comprises over 80 diverse national and community-based organizations which have joined to address issues and opportunities related to migration, refugee protection and the promotion of democratic pluralism. The Forum is a 501(c)3, non-profit organization.

Summary of Testimony of Rick Swartz

House Of Representatives, Committee on the Judiciary
Subcommittee on Immigration, Refugees, and International Law

March 30, 1988

I strongly support HR 3816 to extend the legalization application period for one full year, until May 4, 1989. I likewise urge that the application period for Cuban/Haitian adjustment be extended until May 4, 1989. I also urge adoption of several amendments to clarify and confirm Congressional intent regarding eligibility criteria and documentation requirements, and to greatly strengthen community outreach and the QDE system.

1. 50 - 75% of the eligible population have not yet applied.

According to the most credible estimates, at least 1 million eligible people, and perhaps 2 to 2.5 million, have not applied for legal status, and will remain in the shadows unless HR 3816 and related clarifications are enacted immediately.

Indeed, Senator Simpson, the Administration and the members of the Select Commission argued during the debate on IRCA from 1981-1986 that there were 3.5 - 6 million undocumented persons residing in the U.S. as of 1978 or 1980, and that 250,000 - 500,000 more enter the country annually.

2. Extension is required to achieve the purpose of IRCA.

The Congress and the nation will not achieve the historic goals of legalization unless the application period is extended for one year. If the program ends in five weeks, as now scheduled, 1-2 million eligible people will remain undocumented. Their continuing presence will undercut the enforcement of and compliance with employer sanctions. They will be subject to greater exploitation and human suffering than ever before. We will not have "wiped the slate clean", we will not have allowed enforcement activities to concentrate on deterring future undocumented entries, and we will not have ensured that legalization is a one-time-only program.

3. There is a national consensus of why applications are low.

Expert analysis, reports prepared by foundations and coalitions across the country, judicial rulings and press accounts concur that the primary barriers to participation of eligible persons are:

- restrictive regulations defining several key eligibility requirements;
- excessive and inconsistent documentation requirements, coupled with inherent difficulties in obtaining employment and other records;
- Woefully ineffective community outreach;
- Family unity concerns;
- General apprehensions about INS;
- Delays in the processing of applications by QDEs and INS delays in issuing approvals;
- Inadequate public and private sector resources;
- Dramatic staff layoffs at QDEs and INS legalization offices over the past several months when outreach is critical and demand for services is expected to intensify.

4. INS mid-course relaxations of requirements are helpful but not adequate.

5. Congress needs to address family unity concerns.

If it is the policy of this country to deport and separate families in these circumstances, then let us be clear about it and admit it. If it is the policy of this country to keep families already here together, then let us be clear about our commitments. A clear and honorable policy on family unity, one which is consistent with our deepest values, can only help legalization work.

6. The community outreach system which Congress mandated has not yet been established.

INS prevented the Justice Group (the recipient of the $10.7 million INS public education contract) and private sector groups from cooperating together on public education and community outreach, thereby undermining Congressional intent regarding two key elements of successful implementation of the legalization program: a strong QDE system and effective community outreach.

Congress knew that strong cooperative outreach was the key to the success of legalization, would take time to work and had to begin immediately upon enactment of IRCA. That was 17 months ago. Only now is community outreach beginning.

7. Achievement of Congressional intent regarding legalization has been frustrated by lack of public and private resources.

The Administration's decision not to request an appropriation for legalization, and Congress' decision not to provide one, have resulted in delayed and inadequate funding throughout the program. This has resulted in poor policy decisions, driven by cash flow considerations, and an ever-weakening public and private sector legalization infrastructure.

The damage to the legalization program is apparent more today than ever. With only 5 weeks left in the program, INS is predicting a "surge" of applications: but at the same time, both INS and service groups have been forced to lay off hundreds of legalization staff.

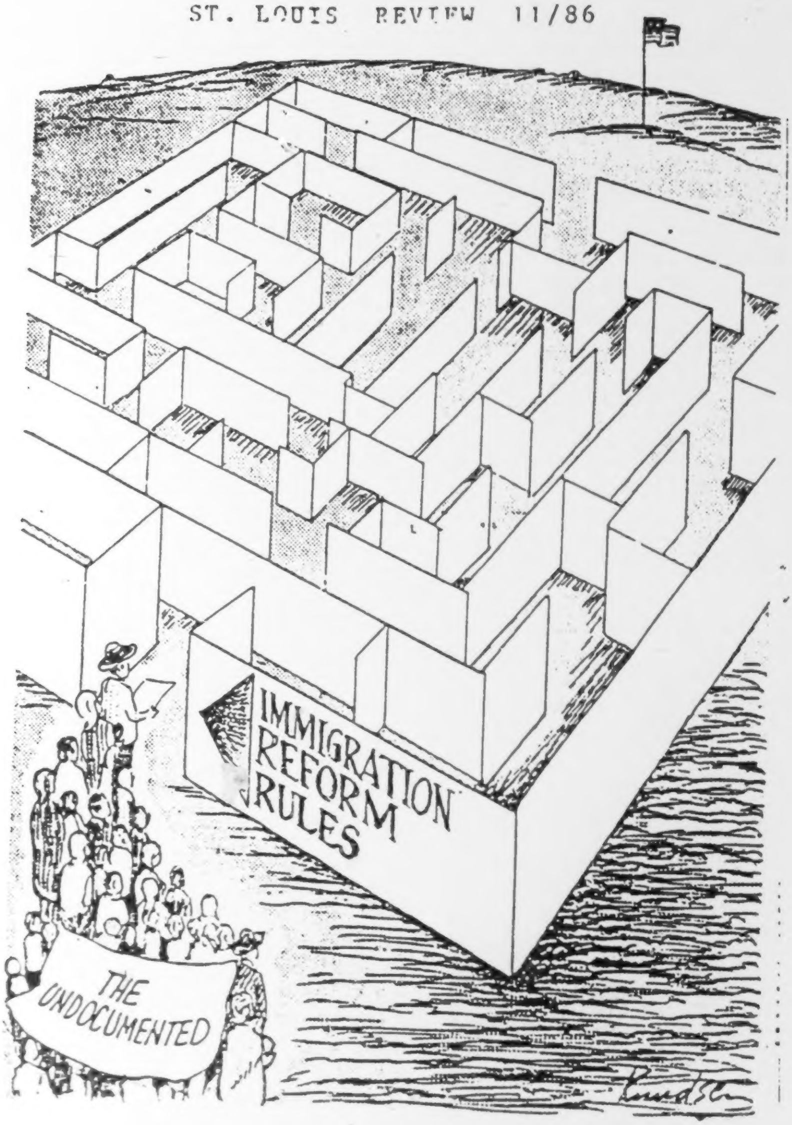
8. A full one-year extension is needed.

A full one-year extension, and related clarifications and simplifications consistent with Congress' original intent, are necessary at this time to enable both INS and private groups to regroup, rebuild, rehire and restore their capacities to do the job Congress mandated.

This is possible. All actors have learned important lessons in the past year, sometimes the hard way. INS finally has simplified documentation requirements, and strives for greater consistency. Certain regulations have been relaxed, and Congress can helpfully clarify its intent with regard to several others. INS, attorneys, QDEs and other service providers now have greater practical experience, and staff which remain are well trained, if not well rested.

But a full one year extension is needed to achieve the historic goals of legalization: freedom for all Americans from the desparation of a shadow society, and freedom for undocumented people to live within the law as full members of our great nation.

ST. LOUIS REVIEW 11/86



Testimony of Rick Swartz

House Of Representatives, Committee on the Judiciary
Subcommittee on Immigration, Refugees, and International Law

March 30, 1988

Thank you Mr. Chairman for inviting me to testify this morning regarding the most significant program in U.S. immigration history: the legalization of perhaps four million undocumented persons who have resided continuously in the United States since January 1, 1982.

I am Founder and President of the National Immigration, Refugee, and Citizenship Forum. The Forum is a non-profit, non-partisan, educational organization established in 1982 to build consensus and promote public understanding regarding the wide range of issues in the migration, refugee and citizenship field.

The Forum has a membership of over 100 diverse national and community-based organizations which are involved in migration issues and committed to the principles of democratic pluralism. Forum members include state and local governments, labor unions, ethnic and civil rights groups, religious bodies, legal and professional associations, academia, businesses and local and regional coalitions from around the country. Many Forum members, as well as literally hundreds of organizations with which the Forum works nationwide, are directly involved in implementation of the legalization provisions of the Immigration Reform and Control Act of 1986.

I am testifying today in my capacity as a lawyer and expert on immigration matters. The views I express are my own, and do not necessarily represent those of Forum members. I wish to emphasize that the Forum as an organization has not formally adopted a position on legislation now pending before this committee.

Although I do not formally speak for these organizations, I wish also to emphasize, that hundreds of national and local organizations around the country have adopted positions in support of HR 3816, to extend the legalization application a full year from May 5, 1988 to May 5, 1989. Scores if not hundreds of these organizations also have determined that the national interest would best be served by adoption of several amendments to clarify congressional intent and otherwise to insure the full achievement of the honorable and historic purposes of legalization.

Summary of Positions

I strongly support HR 3816 to extend the legalization application period for one full year, until May 4, 1989. I likewise urge that the application period for Cuban/Haitian adjustment be extended until May 4, 1989. I also urge adoption of several amendments regarding legalization, including amendments:

1. To clarify and confirm Congressional intent that the eligibility requirement of "unlawful status known to the government" means known to any federal agency, not only INS.

2. To clarify and confirm Congressional intent that the concept of "continuous residence" in the U.S. means absences of not more than 90 days in any single year, and total absences since 1982 of not more than one year; and that INS is required to notify applicants of the right IRCA grants them to apply for a waiver of the continuous residence requirement due to "emergency or extenuating circumstances."

3. To clarify and confirm Congressional intent that the concept of "physical presence since date of enactment" except for "brief, casual and innocent absences" does not per se require a legalization applicant to seek advance permission from INS to depart the US.

4. To clarify and confirm Congressional intent regarding documentation requirements in light of experiences to date under the legalization program, in order to establish

consistent and simple national guidelines for the minimal level of documentation required.

5. To provide more explicit direction to INS regarding its public education activities and relationships with qualified designated entities, including: 1) a mandate that INS cooperate fully with private sector groups and local governments with regard to community outreach; and 2) a mandate that INS enter into cooperative agreements with QDEs with regard to counseling of temporary residents who apply for permanent residence under IRCA.

6. To prohibit the deportation of parents, spouses and children of persons who qualify for legalization if these family members have resided in the United States since November 6, 1986; if the family relationship persists today; and if they are have not committed criminal offenses which would render them excludable.

Together with a full one-year extension, the foregoing clarifications of Congressional intent are necessary to ensure achievement of the purposes of legalization. Failure to act at this time ensures that Congress's historic objectives will be thwarted.

Summary of Arguments in Support of HR 3816 and Clarifying Amendments

1. According to the most credible estimates, at least 1 million eligible people, and perhaps 2 to 2.5 million, have not applied for legal status, and will remain in the shadows unless HR 3816 and related clarifications are enacted immediately.

2. Congress enacted the legalization provisions of IRCA to achieve four primary goals:

- To aid INS in its enforcement activities, enabling it to concentrate resources on preventing new illegal entries and visa abuse.
- To serve more general law enforcement goals and the public interest by eliminating the existing undocumented alien subclass, now reluctant to report violations of laws and to allow these persons to participate openly in society.
- To assist employers who have employed undocumented persons, by allowing employers to hire such persons who are legalized without violating employer sanctions.
- To diminish exploitation by enabling several million undocumented persons to acquire legal status and live within the protection of the law.

3. The Congress and the nation will not achieve the historic goals of legalization unless the application period is extended for one year, Congress clarifies eligibility and documentation requirements, and outreach is strengthened. If the program ends in five weeks, as now scheduled, one million or more eligible persons will remain in the shadows. Their presence will undercut the enforcement of and compliance with employer sanctions. They

will be subject to greater exploitation and human suffering than ever before. We will not have "wiped the slate clean", we will not have allowed enforcement activities to concentrate on deterring future undocumented entries, and we will not have ensured that legalization is a one-time-only program.

4. Expert analysis, reports prepared by foundations and coalitions across the country, judicial rulings and press accounts concur that the primary barriers to participation of eligible persons are:

- restrictive regulations defining several key eligibility requirements;
- excessive and inconsistent documentation requirements, coupled with inherent difficulties in obtaining employment and other records;
- Woefully ineffective community outreach;
- Family unity concerns;
- General apprehensions about INS;
- Delays in the processing of applications by QDEs and INS delays in issuing approvals;
- Inadequate public and private sector resources;
- Dramatic staff layoffs at QDEs and INS legalization offices over the past several months when outreach is critical and demand for services is expected to intensify.

5. Legalization is a social program of unprecedented dimensions. We need more time, resources and cooperation to make it work.

In enacting the legalization program, Congress demanded a great deal of all participants in implementation. It imposed tight timetables, avoided several tough policy question (eg. family unity) and failed to appropriate any funding for all aspects of IRCA until July of 1987. The Administration did not request an urgent appropriation or any funding for legalization. Because of these initial funding patterns, the program has been starved for resources. Establishment of the QDE and public education program was delayed, and both INS and private service providers have often been forced to make decisions driven by cash flow concerns.

6. For legalization to succeed, all the major partners involved in implementation must share responsibility for our inability to date to achieve the "flexible and generous" program and important social goals which Congress intended. We have today a last clear chance to continue an historic effort, learn from our mistakes, build upon our achievements and renew our commitment to full and effective cooperation. But Congress needs now to enact a full, one year extension of the application period, clarify its intent and strengthen the system if legalization is to succeed.

7. In the end, the purpose of legalization is to expand the horizons of human freedom. Freedom for all Americans from the scar of a shadow society, freedom for undocumented people to live within the law as full members of our great nation. Together, we can yet achieve the historic goals of the legalization program.

Arguments and Analysis

I. BASED ON CONSERVATIVE ESTIMATES, AT LEAST 1 MILLION ELIGIBLE PEOPLE HAVE NOT YET APPLIED FOR LEGALIZATION.

A. As of March 18, 1,084,356 persons had applied for legalization. As of March 11, 692,991 applications have been approved for temporary residence; 10,327 had been denied.

B. In November 1986, INS estimated that up to 3.9 million persons might be eligible for legalization and expected that at least 2 million would apply. INS implementation and fiscal planning were based on these projections. In August 1987, INS officials stated that the legalization program would reach 2 million people but not the 3.9 million projected originally (N.Y. Times 8/3/84). In January 1988, INS asserted the 2 million goal would be reached; in early March, the INS stated that perhaps 1.35 million would apply (N.Y. Times 3/13/88).

C. Senator Simpson, the Administration and the members of the Select Commission argued during the debate on IRCA from 1981-1986 that there were 3.5 - 6 million undocumented persons residing in the U.S. as of 1978 or 1980, and that 250,000-500,000 more enter the country annually.

1) In his opening statement on May 5, 1981, at the first joint hearing of the House and Senate Subcommittees on the final report of the Select Commission, Senator Simpson stated that "...hundreds of thousand of illegals immigrants cross our borders every year. Many stay, creating a fugitive and exploited

subsociety in our country, which is estimated to comprise between 3 and 8 million people."

2) During the same May 5, 1981 hearing, Father Hesburgh, Chair of the Select Commission, and Lawrence Fuchs, Executive Director, stated that the best estimates were "that as of 1978, there were 3.5 - 6 million undocumented residents."

3) In February 1983, Father Hesburgh stated during Senate Hearings on IRCA: "I think one would have to say that those who oppose employer sanctions and certification, for what I believe to be the wrong reasons, are by the same token opposing the legalization of somewhere between 3.5 - 6 million undocumented people who are in the country today without documents."

4) On May 23, 1985, when Senator Simpson introduced IRCA for the third time, he stated that "hundreds of thousands of illegal immigrants now cross our porous borders every year. Some authorities estimate the new annual inflow at between 250,000 and 500,000 persons. The number of illegal aliens already in the country is unknown, but the Select Commission utilized the figure of 3.5 to 6 million as the number for 1978. There are surely more now." (Cong. Record, May 23, 1985 at S 7309).

5) In 1983, Census Bureau demographers Robert Warren (now chief demographer at INS) and Jeffrey Passel conducted a study based on data from INS and the 1980 census. They concluded that approximately 2.1 million undocumented aliens were actually counted in the 1980 census, and that the actual number resident would be higher because of the likelihood of an undercount.

6) In 1985, the National Research Council of the National Academy of Sciences issued a report of its panel on Immigration Statistics (15 experts plus staff) entitled *Immigration Statistics: A Story of Neglect.* The report concluded that "though no range could be soundly defended, a population of 1.5 to 3.5 million illegal aliens in 1980 appears reasonably consistent with most of the studies."

Congress should take care in responding at this time to the "politics of numbers" regarding undocumented immigrants. The "mid-range" of the most conservative estimates indicate that as of January 1, 1982, there were 2.9 - 3.9 million undocumented residents in the U.S. According to Senator Simpson's public statements, the range for undocumented residents as of 1982 would be a low estimate of 4.5 million to a high of perhaps 8 million.

In my judgment, based on conservative estimates, at least 1 million and perhaps 2.5 million or more eligible persons remain in the shadows. In other words, 50% or more of the eligible population have not yet applied.

II. A ONE-YEAR EXTENSION OF THE APPLICATION PERIOD AND CLARIFICATION OF CONGRESSIONAL INTENT REGARDING ELIGIBILITY CRITERIA ARE REQUIRED TO ACHIEVE THE PURPOSE OF LEGALIZATION AND THE WILL OF CONGRESS.

A. Congressional Intent

It is clear that Congress intended that legalization be implemented in "a liberal and generous fashion". As stated in the July 16, 1986, Report of the Judiciary Committee to accompany HR 3810 (rep. 99-682, part 1, at 72)

> "The Committee intends that the legalization program should be implemented in a liberal and generous fashion, as has been the historical pattern with other forms of administrative relief granted by Congress. Such implementation is necessary to ensure true resolution of the problem and to ensure that the program will be a one-time-only program."

The Committee also recognized the importance of "flexibility" in establishing eligibility regulations and documentation requirements. The Committee Report on HR 3810 states at page 73:

> "Unnecessarily rigid demands for proof of eligibility for legalization could seriously impede the success of the legalization effort. Therefore, the Committee expects the INS to incorporate flexibility into the standards for legalization eligibility, permitting the use of affidavits of credible witnesses and taking into consideration the special circumstances relating to persons previously living clandestinely in this country."

B. Legalization regulations and INS documentation requirements are more restrictive than Congress intended, and are a major barrier to participation.

In December of 1986, the Forum retained the pro-bono services of the prestigious Washington law firm of Hogan and Hartson to prepare comments on INS legalization regulations. Attached as Appendix A of this testimony is the executive summary of the Hogan and Hartson comments, together with a detailed legislative history of Congressional intent regarding specific eligibility requirements and the overall purpose of legalization.

These comments were submitted on behalf of over 30 diverse national organizations directly involved in legalization. The comments were also endorsed in substance by Congressman Peter Rodino, chief sponsor of IRCA's legalization program. (See attachment B, letter of April 9, 1987 from Cong. Rodino to Attorney General Meese)

Unfortunately, INS's final regulations rejected Hogan and Hartson's comments, Cong. Rodino's letter and the clear intent of Congress. It adopted instead restrictive interpretations which:

* have barred eligibility of tens if not hundreds of thousands of persons Congress intended to legalize;

- rendered the process a legalistic maze;
- imposed unwarranted documentation burdens on applicants and those seeking to assist them, especially QDE's;
- prompted class action litigation challenging each of the major eligibility regulations and their implementation.

There is exhaustive documentation and substantial consensus among experts, the courts, major coalitions and elected officials around the country that restrictive regulations, excessive documentation requirements are key reasons 1 - 2.5 million eligible people have not applied for legalization and excessively rigid and inconsistent application of standards. (Other key reasons, fear of INS, inadequate public education and community outreach, and family unity issues, are discussed below.

I will submit for the record executive summaries of major reports on legalization implementation prepared by broad based coalitions, foundations and/or state and local governments from California, Texas, Illinois, Massachusetts and New York. These reports are remarkable in many respects, including the consistency of their analysis and conclusions that for the purposes of legalization to be achieved, Congress must extend the application period for 1 full year and clarify, or strengthen, its mandate that INS implement the program in a "generous and flexible manner."

Each of these reports concludes that restrictive regulations and excessive documentation requirements are major barriers to participation. Excerpts from "The Legalization Program and its Implementation in Illinois (February 1988), summarize a nationwide pattern:

> "A.D. Moyer , District Director of the INS in Chicago, said that the majority of eligible non-applicants are those who cannot assemble the necessary documentation. David Strauss, Executive Director of the Illinois Human Rights Commission, stated that the number one problem faced by immigrants filing for amnesty has been the lack of verification letters from employers. And in a national survey conducted by The Dallas Times-Herald, 47 percent of QDE directors and 45 percent of immigration lawyers said that the most common reason eligible immigrants are not applying for legalization is the lack of documents.
>
> A major cause of the documentation problems is that many immigrants worked at jobs where no record of employment was kept because they were paid off the books in cash. Though employers may provide affidavits in lieu of official records in such cases, many are reluctant to do so because the absence of records may lead to investigation by federal officials. IRCA stipulates that the IRS or Social Security Administration may not request the employer letters or affidavits[filed with a legalization application], nonetheless, employers fear that they will be found liable for unpaid payroll and social security taxes. There is nothing in IRCA that compels employers of legalization applicants to supply such documentation...
>
> The problems immigrants have in obtaining documents can be illustrated through the following anecdotes:
>
> "Gustavo H. left the suburbs in Mexico City seven years ago, where he says he was constantly destitute, to find construction work in the suburbs of Du Page County. He was always paid in cash and though he mailed money orders to his family in Mexico City he did not keep the receipts. He says that he will not apply for amnesty even though he thinks he qualifies: 'I've begged some of my past employers to give me affidavits like the INS says we must have, but they will not do it. I still need to work for them so I can't press to much.'"

The character and status of the litigation filed to date provides further evidence that Congressional action to extend and clarify the legalization program is needed now. Attached as Appendix C are copies of September 1987 - January 1988 of issues of the IRCA Clearinghouse Advisor, which the Forum publishes. Included in each issue are "Litigation Briefs", written by the national staff of The American Immigration Lawyers' Association, which describe the status and character of litigation involving IRCA.

Class action lawsuits have been filed in the past few weeks by major law firms and civil rights groups challenging INS's regulations regarding "known to the government" (Arent Fox and the Washington Lawyers's Committee) and "continuous residence" (Brobeck, Phleger and the San Francisco Lawyers Committee). The following excerpt from a March 25 press release on the "continuous residence" suit is illustrative:

> The plaintiffs in this action have absences in excess of the 45/180 day rule. Instead of considering their eligibility for a waiver, however, INS has refused to even accept their applications for legalization. Ramon Cervantes, for example, has resided in this country since 1979. During this 14-year period, he was absent on three occasions for a total of approximately 200 days. On his application, he listed reasons for his absences as including the death of his sister and the serious illness of his son. The INS refused to process his application. Rosa Hernandez has resided here since 1978 and her only absence was for 145 days when she went to Mexico to care for her dying father and then to comfort and care for her bereaved mother after his death. During her interview with INS, she was never informed of the availability of a waiver for her absence and instead, was denied outright.

C. INS mid-course relaxations of requirements are helpful but not adequate

INS shifts in policy and practice over the first 10 1/2 months of the application period provide perhaps the most compelling evidence of the need for a full one-year extension of the application period and related clarifications of Congressional intent.

Many proponents of legalization have applauded these changes, which were consistently urged by Cong. Rodino, members of this Committee and scores of national and community organizations around the country.

Unfortunately, however, it must be said that INS mid-course corrections or improvements in regard to regulations and documentation requirements represent a classic cases of "too little too late". INS could and should have adopted a more "flexible and generous" approach from the beginning. Many of the changes have not been publicized, and a great deal of misinformation must be overcome. This cannot be accomplished at all, much less with adequate credibility, with only 5 weeks left in the program.

D. Congress needs to address family unity concerns

All Americans are committed to the strength and sanctity of the family. President Reagan has provided great leadership in this area. Families are the soul of our communities, and our nation.

IRCA did not specifically address the issue of the fate of a legalized alien's immediate relatives who reside in the U.S. but who do not themselves qualify for legalization. There has been much debate about this issue, but no clear resolution. INS' "Family Fairness" policy is limited in scope and of limited reassurance.

Congress can reaffirm its commitment to family values by providing clear direction to INS not to deport parents, spouses and children of legalized aliens who have lived here since November 1986 and have obeyed our laws. INS says it will treat such matters on a case-by-case basis. The undocumented aliens who have not applied for legalization for fear of family separation need greater reassurance.

If it is the policy of this country to deport and separate families in these circumstances, then let us be clear about it and admit it. If, as I hope, it is the policy of this country to keep families already here together, then let us be clear about our commitments. A clear and honorable policy on family unity, one which is consistent with our deepest values, can only help legalization work.

In sum, Congress intended that legalization be implemented in a "liberal, generous and flexible" manner. That objective has not yet been achieved. Initial INS regulations and documentation requirements were excessively restrictive, creating a complicated and confusing legalistic maze. Inconsistent practices created greater confusion. QDEs and other service groups responded cautiously, often over preparing cases to protect the clients served, but which resulted in excessive time and costs for preparation, backlogs, loss of volume, and impatient constituents.

Only most recently have INS and the QDEs and others been able to reach a simpler understanding of requirements and streamline the process, as Congress intended. A one year extension will allow this new understanding to produce results.

III. INS prevented the Justice Group (the recipient of the $10.7 million INS public education contract) and private sector groups from cooperating together on public education and community outreach, thereby undermining Congressional intent regarding two key elements of successful implementation of the legalization program: a strong QDE system and effective community outreach.

The House Judiciary Committee Report on IRCA states at p. 73 that:

> "The Committee has learned that legalization programs in other countries have usually produced a low rate of participation among the eligible candidates. At least part of the reason is distrust of authority and lack of understanding among the undocumented population. The Committee hopes that by working through the voluntary agencies, the Attorney General might be able to encourage aliens who fear coming forward. To assist in this endeavor, the bill authorizes the Attorney General to fund outreach services and provide for an extensive education and outreach program prior to (emphasis added) the application period."

The recent Carnegie Endowment Report, The Legalization Countdown, by Doris Meissner and Demetrios Papademetriou discusses in detail the woeful inadequacy of INS' public information effort. However, it is important to elaborate on the Carnegie Report. For, until the last few weeks, INS has not even attempted to achieve Congressional intent regarding public education. It is also important to set the record straight about the Justice Group, the INS contractor for public information. In defense of the Justice Group, INS Washington officials rejected its plans for a strong and cooperative community outreach effort.

The Carnegie Report summarizes the record as follows:

> In its proposal to the government, the Justice Group built its ideas on the proposition that the job "calls for much more that mass media approaches." It calls a Madison Avenue strategy "questionable in terms of audience credibility or true reach for many important sectors..." To complement the media initiatives, the proposal describes "arrangements for special counseling and miscellaneous support of its planned information dissemination and outreach effort" from a broad range of groups, listed by name, to carry out the public information task.
>
> Carnegie Endowment The Legalization Countdown, pp 14-15, February 1988.)

In light of this history and the woeful inadequacy of the information and outreach effort INS has attempted, the authors of the Carnegie Report concluded that:

> "In the absence of a coordinated campaign with sensitive local programs, INS has so far failed the test of launching a successful and comprehensive public information effort."
>
> "This failure of the public information effort to understand and work effectively to penetrate ethnic communities at the local level, as had been called for in the [Justice Group's] contract proposal, represents a serious missed opportunity. INS' decision to exclude QDEs and other assistance groups from both the planning and execution of the earlier campaigns may prove to have been a momentous miscalculation."
>
> "INS has apparently recognized this deficiency. The ambitious public information effort just now beginning offers some hope that the Achilles heel of legalization may be repaired. Unfortunately, it is six months late. The issue now is whether the current campaign can bring about in the time remaining the surge of applications needed to achieve a success."
>
> (Carnegie Endowment (pp. 14, 20-21). February 1988)

The details of the INS refusal to allow cooperation between the Justice Group, QDEs and other private sector groups provide clear evidence that Congressional intent regarding community outreach has been frustrated. Even now, with just five weeks remaining until the end of the application period, the "flyers" which INS has promised QDEs and others for mass distribution have not been printed or delivered to local sites for pick-up and dissemination.

This "last ditch" INS effort to cooperate on community outreach is no different and no better than its efforts on outreach since IRCA was enacted: it is too little, too late.

If this judgment is harsh, it is supported by the record. The QDEs and other private sector groups have made every effort over the past 17 months to cooperate with INS on community outreach as well as other aspects of legalization implementation. At the national level consistently, and more often than not at the local level, INS has rejected or ignored these efforts.

Indeed, virtually all flyers, brochures and other focused, non-media outreach efforts to date have been produced by private sector groups (and sometimes local INS offices) on their own initiative, using very limited private resources. (See Appendix for examples of brochures and flyers produced by private sector organizations and coalitions around the country.)

More specifically, consider the following chronology of private sector efforts to cooperate on legalization outreach (some examples of these letters are attached as Appendix ###). The central offices of INS rejected or ignored almost all efforts at cooperation until the past few weeks.

November 13, 1986	Letter to INS Commissioner Nelson from 20 national groups seeking "cooperative efforts" and the establishment of private sector advisory committees on regulations and public education.(attached) Committees never established.
December 12, 1986	Letter from the same 20 groups requesting a meeting to discuss cooperation on public outreach.

January 12, 1987	Justice Group submits proposal to INS naming as subcontractors the National Forum, U.S. Catholic Conference and numerous other groups. (see proposal Executive Summary, attached)
April 9, 1987	Justice Group awarded $10.7 million INS public education contract; pursues negotiations with the National Forum and others regarding subcontracts cooperation on outreach.
Late April/Early May 1987	INS stalls negotiations between Justice Group and private organizations on outreach.
April/May 1987	INS/National QDEs negotiate "cooperative agreement." Final language requires QDEs to participate in community outreach with materials INS provides
Late May/Early June	Commissioner Nelson written by U.S. Catholic Conference, Conference of Mayors, American Jewish Committee and National Association of Manufacturers offering to cooperate with Justice Group, through the National Forum, on community outreach (letters attached). No reply from INS.
June 5, 1987	National QDEs letter to INS regarding lack of public outreach; need for detailed information (e.g., confidentiality) for community to ease fears. No INS action.
June 6, 1987	Dallas Times Herald reports INS may drop community outreach effort.

End of June, 1987	INS formally prohibits Justice Group from pursuing community outreach subcontract with the National Forum.
July, 1987	National QDE meeting with INS in Washington; QDEs request that INS TV and radio spots encourage others to seek assistance of QDEs; QDEs also request development of brochures for distribution. No INS action.
July 30, 1987	National QDE letter to INS expressing concern that INS public education spots for August and September will not refer to QDEs.
August 6, 1987	National QDE letter to INS stating "we fear that the absence of extensive information regarding the availability of assistance from community based organizations... will significantly limit the number of applications coming forward;" also notes INS has not provided QDEs any outreach materials as required by the cooperating agreement.(letter attached) No INS action on requests.
August 11, 1987	ILGWU letter to INS on behalf of national organizations on legalization outreach. Requests a formal advisory process; that INS ads should put emphasis on confidentiality of applications and encourage referral to QDEs; stresses need to reach non-Hispanic populations and provided other specific outreach ideas (letter attached). No INS reply action on requests.

September 10, 1987	National QDE letter to INS stressing need for leaflets, pamphlets and posters in multiple languages for distribution in ethnic communities. No INS action.
October 2, 1987	National QDE letter to INS setting forth specific ideas regarding nature and content of outreach materials; again requesting flyers and posters in bulk (letter attached). INS agrees to forward suggestions to Justice Group.
November 4, 1987	National QDE letter to INS confirms INS statement of "dissatisfaction" with Justice Group response to October 2, QDE letter.
November 20, 1987	National QDE letter regarding November 12 meeting with INS at which INS described new "national" and "regional" public education campaign, and encouraged QDEs to work with regional INS.
December 15, 1987	National QDE letter regarding December 11 presentation by Justice Group and stating QDE encouragement at incorporation of some QDE suggestions, again requesting quantities of flyers, posters and pamphlets; INS for the first time agrees to provide and include box for insertion of QDE referral information.
January, 1988	INS sends QDEs an INS handbook on legalization applications (eight months after the program began).

February 2, 1988	National QDE letter expresses concern at INS decision that new posters and flyers will not be available until March.
February 12, 1988	QDE letter to request INS funds for distribution of new posters, etc.
March 2, 1988	QDE letter to INS states INS had stated $200,000 may be available for distribution.
March 8, 1988	National QDE letter to INS confirming INS representation bulk flyers would be available for pick-up by March 25, posters by March 15; letter also confirms INS statement of $200,000 for distribution may not be available.

In sum, over the past 17 months, INS has frustrated Congressional intent and virtually all efforts by private sector groups to cooperate on community outreach. The Justice Group was blocked from carrying out the critical outreach component of its public information strategy. QDEs are just now about to receive from INS outreach materials they are required by contract to distribute, and which they have requested persistently for over a year. INS is just now beginning to publicize the assistance QDEs can provide, despite a clear Congressional mandate to work with QDEs to overcome the fear of applying and provide professional assistance.

The community outreach system which Congress mandated has not yet been established. Only now is INS even attempting to work with private groups. Congress knew that strong cooperative outreach was the key to the success of legalization, would take time to work and had to begin immediately upon enactment of IRCA. (See House Judiciary Committee Report.) That was 17 months ago. Only now is community outreach beginning. The legalization period needs to be extended for a full year, until May 5, 1989, for Congressional intent to achieved.

IV. Achievement of Congressional intent regarding legalization has been frustrated by lack of public and private resources.

The Administration's decision not to request an appropriation for legalization, and Congress' decision not to provide one, have resulted in delayed and then inadequate funding throughout the program. This has resulted in poor policy decisions, driven by cash flow considerations, and an ever-weakening public and private sector legalization infrastructure.

The damage to the legalization program is apparent more today than ever. With only 5 weeks left in the program, INS is predicting a "surge" of applications: but at the same time, both INS and service groups have been forced to lay off hundreds of legalization staff.

As of today, there are fewer staff to undertake community outreach, help applicants or process applications than since the program began. According to the March 4 Austin American Statesman, INS has ordered personnel cuts at legalization offices across the Southern region. Fourteen of 21 sites reportedly are affected. The Austin legalization office, for example, opened with 19 employees, lost 4 to attrition, and laid off 5 more on March 11. The San Antonio legalization office laid off 5 staff in early March.

In Michigan, the only INS legalization office is in Detroit. It opened with 19 employees. Today it has 2 employees to handle the entire state.

As was predicted months ago, layoffs also have weakened the QDEs at the time when INS predicts volume will increase, and all agree the more difficult cases are presented. This pattern is being repeated throughout the country, according to "White Papers" and other reports issued recently in California, Chicago, New York and Texas.

Last spring, Congressmen Mazzoli and Rodino wrote the President and the Attorney General to warn that the legalization program, and IRCA implementation generally, were threatened by the Administration's inadequate appropriation request. In the case of legalization, no appropriation was requested, and none was granted. When the program began last year, the INS legalization account was desperately low on funds--and it is now.

A year ago, Congressman Mazzoli rightly warned this could happen. The program needs another chance, and a second wind.

V. A full one-year extension is needed.

A full one-year extension, and related clarifications and simplifications consistent with Congress' original intent, are necessary at this time to enable both INS and private groups to regroup, rebuild, rehire and restore their capacities to do the job Congress mandated.

This is possible. All actors have learned important lessons in the past year, sometimes the hard way. INS finally has simplified documentation requirements, and strives for greater consistency. As discussed above, certain regulations have been relaxed, and Congress can helpfully clarify its intent with regard to several others. INS, attorneys, QDEs and other service providers now have greater practical experience, and staff which remain on the job are well trained, if not well rested.

All this can contribute to a much more efficient, streamlined and effective processing system, as Congress originally intended. But not overnight, or in six months. It will take some time to "regroup and restore," begin effective community outreach, and find the necessary resources to support a strong, if streamlined, service and adjudications infrastructure.

Conclusion

In the end, the purpose of legalization is to expand the horizons of human freedom. Freedom for all Americans from the scar of a shadow society, freedom for undocumented people to live within the law as full members of our great nation. Together, we can yet achieve the historic goals of the legalization provisions of the Immigration Reform and Control Act of 1986.

TESTIMONY OF DANIEL STEIN

THE FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. Chairman and members of the committee, my name is Dan Stein and I am the Executive Director of the Federation for American Immigration Reform (FAIR).

I am pleased to have the opportunity to submit this testimony to the committee in support of Senator Exon's bill dealing with federal benefits for illegal aliens.

FAIR is the largest not-for-profit immigration reform organization working on immigration issues. Founded in 1979, FAIR works for a stable U.S. population size. We educate Americans on the need to stop illegal immigration, and keep legal immigration rates at levels consistent with the national interest.

Among FAIR's goals:

- Educate Americans on the way immigration policy is set and how the present law operates.
- Balance the level of immigration with the needs of America's poor and disadvantaged.
- Ensure that every immigrant to the United States is a legal immigrant.
- Encourage a comprehensive ceiling on legal immigration fixed in accordance with demographic, natural resource, and economic goals of the United States.
- Encourage the U.S. to make greater efforts to foster population control and economic development worldwide, especially in major source countries of legal and illegal immigration to the United States.
- Encourage assimilation as a positive, traditional American value, and oppose policies or programs which impede that progress.
- Encourage a policy that does not restrict or favor persons on the basis of race, religion, culture, or national origin.
- Encourage compliance with U.S. immigration law.

FAIR conducts a host of programs to carry out this policy framework and is regarded by many Americans as an important national voice on many immigration-related policy decisions and events. In most instances, the perspective of the average American finds expression in the views and statements of this organization.

Passage of IRCA

The Immigration Reform and Control Act of 1986 (IRCA) was primarily an enforcement bill that sought to control and deter illegal immigration through increased border enforcement and a system of employer penalties designed to remove the magnet of jobs drawing illegal aliens to the United States. Since our founding in 1979, FAIR has been one of the only organizations working to regain control of our borders through passage of a fair, humane, and enforceable, immigration law. Although we had serious reservations about the legalization program contained in IRCA, we nevertheless supported the entire package and urged its passage by the Congress.

Illegal Aliens and Federal Benefits

In past years, immigration apologists have argued that illegal aliens do not make substantial use of U.S. social service program; that illegal immigrants come to the United States only to work. This assertion has not rested on empirical evidence, but rather on the misinterpretation of but a single survey. This survey was not a study of welfare use or tax payments by illegal aliens, but simply a profile of a small group of illegal immigrants previously apprehended by the U.S. Immigration and Naturalization Service (INS). David North and Marion Houstoun, authors of the report, have repeatedly stated that the sample population used in their research should not be used to estimate welfare dependency rates. The reason: 46 percent of those sampled had been in the U.S. less than one year and over 90 percent of those sampled were apprehended males.

In order to get a clearer picture of whether illegal aliens are using U.S. social service programs, recent surveys have focused on unapprehended illegal immigrants. These samples include women, the unemployed, the elderly, whole family units, and those who have lived in the United States long enough to assimilate and understand the U.S. social service system. The results of these surveys suggest that illegal aliens make average to heavy use of most U.S. social service systems and receive more in benefits than they pay in taxes.

In Los Angeles County alone, illegal aliens apply for $36 million in social services each year. On average 1,800 welfare applications a month are withdrawn after inquiries are made about the applicant's immigrant status. The federal benefit costs come in many forms: medical, unemployment insurance, education, social security. In each instance, studies confirm that illegal aliens make substantial use of taxpayer-financed programs.

Taxes Paid v. Benefits Received

A popular myth is that illegal aliens pay more in taxes than they receive in federal benefits. In fact, studies across the country confirm the exact opposite is true.

In 1984, the INS conducted a study which concluded that though illegal aliens contribute an average of $995 per year in taxes, this contribution was more than offset by social service costs (including costs associated with displacement of employed American workers) of $1,977 per alien.

A 1981 study by David Heer, found that 18.5 percent of illegal alien mothers at the Los Angeles County General Hospital had used either AFDC, Food Stamps or MediCal (California's Medicaid program) since their arrival in the United States. Other studies in California reached similar conclusions. For instance, a 1985 study by the Urban Institute entitled The Fourth Wave, California's Newest Immigrants, found that:

> "State expenditures for public services used by Mexican immigrants have not been offset by taxes paid by this immigrant group, primarily because Mexicans' earnings are low . . . . The combined state and local balance sheet reveals that the average Mexican immigrant household enumerated by the Census receives somewhat more than $2,000 (per year) in state services and transfer payments than it pays in taxes."

It is worth noting that several recent studies, most notably a 1986 study by the Rand Corporation, have concluded that illegal aliens pay more in taxes than they use in social services, "except for education." However, to exclude education from the overall tax-benefit analysis is to misrepresent actual costs. In fact, it is on par with a politician arguing we have a balanced budget, "except for defense." It would be a laughable assertion, if if were not such gross and serious misrepresentation of the truth.

In fact, because so many illegal immigrants have low-paying jobs (due in large part to their illegal status and low educational attainment), their tax payments average about half that of most American workers. Yet illegal alien families average twice as many dependents as the U.S. norm. Because illegal immigrants have so many children, and pay so little in taxes, educational costs represent a significant portion of the state, local, and federal financial burden of illegal immigration.

It is important to remember that in most analyses of immigration, only direct social service costs are factored in. Nondirect (but very real) costs such as transportation, waste disposal, sewage treatment, and defense are rarely included. These nondirect social service costs must be considered if we are to get a true picture of the real costs of illegal immigration.

Medical Costs

Research has shown that public hospitals in large illegal alien communities report sizable deficits due to the cost of providing free medical care to indigent illegal aliens. In Fiscal Year 1983, Los Angeles County estimated that it spent $99.5 million in unreimbursed medical services to illegal immigrants. This amount is greater than the entire Los Angeles County deficit for the same year. One reason for Los Angeles' high medical cost: nearly 70 percent of births in Los Angeles County public hospitals are children born to illegal alien mothers.

In general, hospitals have had no alternative but to pass the high cost of treating illegal aliens on to service paying patients. In May, 1983, for instance, the Arizona Hospital Association estimated that providing health care to illegal aliens cost $4.4 million a year. To recoup this loss, Arizona hospitals required patients to pay an average surcharge of $10.10 per patient per day.

Social Security

While the vast majority of illegal immigrants are young men and women who have yet to reach the age of Social Security eligibility, a significant portion of the illegal alien population does receive Social Security benefits.

The Social Security Administration (SSA) found that in 1986 illegal immigrants drew more than $17 million in benefits and estimate that by 2026 more than 155,000 illegal aliens will be eligible for Social Security benefits, costing U.S. taxpayers $8 billion a year.

A 1983 study by the U.S. General Accounting Office estimates that of the 313,000 non-citizens collecting Social Security benefits overseas, as many as 194,000 may be former illegal immigrants. On average, these Social Security recipients are receiving $23 in benefits for every $1 they paid into the system.

Unemployment

Despite the admonitions of David North and Marion Houstoun, opponents of immigration reform continue to cite the North-Houstoun report to support claims that only four percent of illegal aliens draw unemployment insurance benefits. Yet all recent research indicate that illegal immigrants are significant users of unemployment insurance programs.

In a five-year study, immigration scholar David North examined a small group of illegal aliens apprehended in 1975 by the INS. Upon careful review of state unemployment insurance records for the subsequent five-year period, North found that most returned to jobs in California, and that 49 percent filed for, and 35 percent received, unemployment insurance benefits.

David North is not alone in concluding that illegal aliens make substantial use of California's unemployment insurance program.

In the spring of 1984, the California Employment Development Office estimated that the state of California paid over $100 million a year in unemployment insurance payments to ineligible illegal alien applicants.

Other states have reported similar patterns of welfare abuse by illegal aliens. In 1982, the Illinois Attorney General's office conducted a study to determine how many illegal aliens were applying for unemployment benefits in that state. What they found shocked even the cynical: 50 percent of non-citizen unemployment insurance applicants were illegal aliens using fraudulent documents. The estimated loss to Illinois taxpayers: over $50 million a year.

Housing

Publicly assisted housing has been a major federal budget item averaging over $20 billion a year. Yet despite the billions allocated, many U.S. citizens remain homeless and forced to live in abandoned cars, shelters, and tents pitched under urban freeways.

It is ironic and sad that at a time when U.S. citizens are sleeping on heating grates, it appears that hundreds of thousands of illegal aliens are benefiting from federal subsidized housing.

The numbers are nothing less than shocking: Testifying before the Los Angeles City Council's Committee on Public Health and Human Resources in April 1986, Los Angeles officials estimated that illegal aliens could be occupying more than 30 percent of Southern California's 500,000 units.

Nationwide, the New York City Bar Association claims that as many as 40 percent of publicly assisted households (some four million) have at least one illegal alien tenant.

Though the cost to state and federal governments of another kind of housing may be negligible, I think it should be of real concern: illegal immigrants sleeping in garages and in the farm fields of Southern California. In Los Angeles County alone, it is estimated at there may be as many as 200,000 people living in illegally converted garages, according to a Los Angeles Times survey based on 500 randomly-chosen residences.

Conclusion

Mr. Chairman, in conclusion, I would like to reiterate FAIR's strong support for Senator Exon's efforts to exclude illegal aliens from a host of federal benefits.

At a time when fiscal constraints prevent Congress from enlarging the social service pie, the United States can ill afford to extend benefits to uninvited gate crashers. To extend such benefits, we will have to cut back on social service programs to U.S. citizens or raise taxes in order to support programs that do little more than encourage illegal immigration.

It is ironic that many of those now pressing for federal benefits for illegal aliens once argued, only a short while ago, that few or no illegal aliens made use of U.S. social service programs. FAIR's position has remained clear and is supported by irrefutable evidence: illegal immigration is costing this nation billions of dollars a year that might otherwise go to poor Americans on the bottom of the U.S. economic ladder. Senator Exon's bill goes a long way to rectifying this miscarriage of justice, and we strongly urge you to support this legislation.

###

UNITED STATES CATHOLIC CONFERENCE

1312 MASSACHUSETTS AVENUE N.W., WASHINGTON, D.C. 20005-4105 (202) 659-6771 — Telex 64608

MOST REVEREND JOHN L. MAY, D.D.
ARCHBISHOP OF ST. LOUIS
President

REVEREND MONSIGNOR DANIEL F. HOYE
General Secretary

REVEREND DONALD E. HEINTSCHEL
REVEREND ROBERT N. LYNCH
MR. FRANCIS X. DOYLE
Associate General Secretaries

March 2, 1988

Dear Senator:

The undersigned organizations have diverse views on various aspects of the immigration issue. However, our strong commitment to the success of the legalization program of the Immigration Reform and Control Act of 1986 (IRCA) unites us.

With less than three months remaining in the amnesty application period, less than 980,000 undocumented persons have applied. Even assuming a "closing rush" before the May 4 deadline, total applications are not expected to exceed 1.3 million. This is significantly below even the the lowest estimates of the eligible population. A recent Carnegie Endowment report, based on elaborate studies of Census data, placed the number of eligible persons between 1.8 and 2.6 million.

There is broad consensus on the reasons for this unexpectedly low turnout. First, the initial stages of the program were plagued by a series of logistical delays which effectively curtailed the already limited application period. Second, the public education program has not been successful in adequately informing the eligible population about this extremely complicated program. Third, the eligibility rules have changed significantly since the beginning of the program, and tens of thousands of individuals initially deemed to be ineligible are only now becoming eligible. Fourth, the application process is complex and expensive, and applicants need more time to prepare successful applications than originally assumed. Finally, a number of eligibility restrictions are being challenged in court. These challenges may result in many additional persons becoming eligible under the IRCA provisions.

Some of these problems can be overcome, but not overnight. New public education initiatives are underway, and other efforts are imminent. It will take time for these initiatives to penetrate what is by definition a difficult community to reach. The new rules broadening eligibility were published in mid-January, but more time is needed to get the word to persons who may have been turned away from legalization offices previously. Court challenges affecting many thousands of persons have been or will be filed in the next few weeks. Even if they are resolved favorably, however, affected persons will need time to apply.

Suggestions have been made that a short-term "window" be created to allow applicants to file a skeletal application and then supply additional documentation after the deadline passes. This suggestion may be helpful but it is not sufficient. A longer extension is necessary.

Sen. Edward Kennedy and over thirty cosponsors have introduced S. 2015, a bill that would extend the application period for another year. The undersigned organizations urge you to cosponsor this legislation, and to aggressively support immediate action on the bill. Expedited consideration of S. 2015 is essential since the application period's end is fast approaching.

The legalization program was unanimously endorsed by the Select Commission on Immigration and Refugee Policy because no nation can tolerate the existence of a subclass living outside the law's scope and protection. The Congress enacted legalization because the program is in the public interest. S. 2015 is a modest, prudent and necessary measure designed to provide the time required for the program to meet its full potential. We therefore urge your unqualified support for S. 2015.

American Civil Liberties Union
American Council of Nationalities Service
American Jewish Committee
American Immigration Lawyers' Association
Association of Farmworker Opportunity Program
AFL-CIO
Chicago Committee on Immigrant Protection
City of Chicago
Hispanic National Bar Association
International Ladies Garment Workers' Union
League of United Latin American Citizens
Lutheran Immigration and Refugee Services
Massachusetts Immigrant and Refugee Advocacy Coalition
Mexican American Legal Defense and Education Fund
National Council of La Raza
Presiding Bishops Fund for World Relief/The Episcopal Church
United States Catholic Conference
World Relief

○